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Supreme Ct. U. S.

SUPREME COURT OF THE UNITED STATES.

No. ~~906.~~ 209/114

THE LESSEE OF JOSEPH C. PARRISH, Plaintiff in Error,

vs.

ELIPHALET FERRIS, JOHN FERRIS, & al.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF OHIO.

GIDEON, Printer.

Affd. with Costs

Feb. 2/63

1283

SUPREME COURT OF THE UNITED STATES.

No. 296.

THE LESSEE OF JOSEPH C. PARRISH, Plaintiff in Error,

vs.

ELIPHALET FERRIS, JOHN FERRIS, & al.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF OHIO.

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the same to the said John Doe and his assigns from thenceforth for and during and until the full end and term of twenty years from thence next ensuing and fully to be complete and ended; by virtue of which said demise, the said John Doe entered into the said tenements with the appurtenances, and became and was thereof possessed for the said term granted to him as aforesaid. And the said John being thereof so possessed, the said Richard afterwards, on the first day of March in the year aforesaid, with force and arms, entered into said tenements with the appurtenances, whereof the said John Doe was so possessed in manner and for the term aforesaid, which is not yet expired, and ejected him, the said John Doe, from his said tenements, and other wrongs to the said John Doe then and there did, to the great damage of the said John Doe, and against the peace and dignity of the United States of America, whereby the said John Doe saith he sustained damages five hundred dollars, and therefore he brings suit, &c.

WORTHINGTON & MATTHEWS, Att'ys.

(Notice.)

To George Suttles, and Charles Robinson, and Frederick Busch, citizens of the State of Ohio.

Gentlemen:

I am informed that you are in possession of or claim title to the premises in this declaration of ejectment mentioned, or to some part thereof, and I bring suit in this action as casual ejector only, and having no claim or title to the same, do advise you to appear at the next term of the Circuit Court of the United States for the Southern District of Ohio, to be holden at Cincinnati on the third Tuesday of April, A. D. 1858, being the twentieth day thereof, by some attorney of that court, and then and there to cause yourselves to be made defendant in my stead, otherwise I shall suffer judgment therein to be entered against me by default, and I will be turned out of possession.

RICHARD ROE.

Dated this 29th day of March, 1858."

Following which declaration and notice was the following endorsement, to wit:—

(Security for Costs.)

"I acknowledge myself security for costs in the above action.

THOS. PARRISH.

March 29th, 1858."

And afterwards, to wit, on the nineteenth day of October, in the year of our Lord one thousand eight hundred and fifty-eight, the following entry was made upon the journal of said court, to wit:—

(Entry.)

"On motion to the court by Taft and Perry, attorneys for defendant, it is ordered that Eliphalet Ferris, John Ferris, John F.

Stiles, Sarah Ann Muchmore, Charles Muchmore, Deborah Muchmore, Ann Jennings and her husband Serenus Jennings, Benjamin Stiles, Deborah Bramble and her husband Ayres S. Bramble, Phebe Anderson and her husband David Anderson, Juliet Ann Lusk, Elizabeth V. Lusk, Milton H. Lusk, Mary Ferris and her husband Solomon Ferris, Hezekiah Stiles, Eva Jewett, Andrew J. Ferris, Joseph Ferris, Isaac Ferris, Joseph D. Ferris, Mary Keeler and her husband William H. Keeler, Mary F. Bishop, Mary Johnson, Deborah Hopkins and her husband Gilbert Hopkins, Peter Ferris, Samuel Ferris, Solomon Peck, and Jonathan Peck, be made defendants in the place of the now defendant, Richard Roe; and therupon the said defendants filed their consent rule and plea."

And defendants' consent rule, filed on the day and year last aforesaid, is in the words and figures following, to wit:—

(Consent rule.)

Circuit Court of the United States, Southern District of Ohio.

JOHN DOE, ex dem. Thomas Parrish,
against
RICHARD ROE. } In ejectment.

On motion it is offered, that Eliphalet Ferris, John Ferris, John F. Stiles, Sarah Ann Muchmore, Cha's Muchmore, Deborah Muchmore, Ann Jennings and her husband Serenus Jennings, Benjamin Stites, Deborah Bramble and her husband Ayres S. Bramble, Phebe Anderson and her husband David Anderson, Juliet Ann Lusk, Elizabeth V. Lusk, Milton H. Lusk, Mary Ferris and her husband Solomon Ferris, Hezekiah Stites, Eva Jewett, John Jewett, Andrew J. Ferris, Charles K. Ferris, Ruth Ferris, Phebe Ferris, Joseph Ferris, Isaac Ferris, Joseph D. Ferris, Mary Keeler and her husband William H. Keeler, Mary F. Bishop, Mary Johnson, Deborah Hopkins and her husband Gilbert Hopkins, Peter Ferris, Samuel Ferris, Solomon Peck, and Jonathan Peck, who are all citizens of the State of Ohio, be made defendants herein, in the place of the now defendant Richard Roe.

And on the same day and year last aforesaid, came the said defendants by their attorneys and filed in the clerk's office of said court their certain plea in the words following, to wit:—

(Plea.)

Circuit Court of the United States, Southern District of Ohio.

JOHN DOE, ex dem. Thomas Parrish,
against
RICHARD ROE, and the said Eliphalet Ferris, John Ferris, John F. Stiles, Sarah Ann Muchmore, Charles Muchmore, Deborah Muchmore, Ann Jennings and her husband Serenus Jennings, Benjamin Stiles, Deborah Bramble and her husband Ayres S. Bramble, Phebe

Anderson and her husband David Anderson, Juliet Ann Lusk, Elizabeth V. Lusk, Milton H. Lusk, Mary Ferris and her husband Solomon Ferris, Hezekiah Stiles, Eva Jewett, John Jewett, Andrew J. Ferris, Charles K. Ferris, Ruth Ferris, Phebe Ferris, Joseph Ferris, Isaac Ferris, Joseph D. Ferris, Mary Keeler and her husband William H. Keeler, Mary F. Bishop, Mary Johnson, Deborah Hopkins and her husband Gilbert Hopkins, Peter Ferris, Samuel Ferris, Solomon Peck, and Jonathan Peck, come and confess lease, entry and ouster, and admit themselves to be in possession of the premises in declaration described.

And, for plea, say that they are not guilty of the trespass and ejectment in the declaration alleged; and they put themselves upon the country, and the said John Doe doth the like.

TAFT & PERRY,
JAMES & JACKSON,
JOHNSTON & CARROL,
Att'ys for Def'ts.

And afterwards, to wit, on the 27th day of October, A. D. 1859, the following entry was made upon the journal of said court, to wit:—

(Entry.)

This day came the parties by their attorneys, and thereupon came a jury, to wit: Richard Cowling, A. D. Benadum, E. G. Dennis, William Dickey, Alfred Denny, J. L. Wayne, John Hough, Edward Noble, Augustus Stone, J. W. Hartwell, E. C. Crippen, and George C. Smith, who, being duly empanelled and sworn the truth to speak upon the issue joined between the parties, upon their oath, do say, that the said defendants are not guilty of the trespass or ejectment laid to their charge in manner and form as the said John Doe hath complained against them.

And afterwards, to wit, on the 9th day of November, A. D. 1859, the following entry was made upon the journal of said court, to wit:—

(Entry.)

"This day came the plaintiff by his attorney, and moved the court to set aside the verdict hereinbefore rendered and grant a new trial, and for cause whereof, assigns the following: First, because the verdict was contrary to law. Second, because the court erred in its charge to the jury." And afterwards, to wit, on the first day of December, A. D. 1859, the following entry was made upon the journal of said court, to wit:—

(Entry.)

"This day came the plaintiff by his attorney, and filed his bill of exceptions in this cause, which is signed, sealed, and ordered to be

made part of the record, and thereupon it is ordered that the motion for a new trial be continued to the next term of this court."

(Bill of Exceptions.)

Which bill of exceptions last aforesaid is in the words and figures following, to wit: "Circuit Court of the United States, Southern District of Ohio, John Doe, ex. dem. Joseph C. Parrish *vs.* Eliphalet Ferris and others. Ejectment. Be it remembered that on the trial of this cause at the present October term, A. D. 1859, of this court, the plaintiff in order to maintain the issue on his behalf, offered in evidence an agreed statement of facts signed by the counsel of both parties in the words and figures following, to wit: "It is agreed that the following are all the facts in the case material to a determination of the issue, to wit: 1. That Andrew Ferris on and prior to the seventh day of June, eighteen hundred and forty-nine, was seised in fee simple of the real estate described in the declaration, having a daughter, an only child, unmarried, named Elizabeth A. Ferris. 2. That on the day last aforesaid, the said Andrew Ferris made his last will and testament, and died on the fifteenth day of June, in the year aforesaid, and his said last will and testament on the twenty-sixth day of June in the same year was duly admitted to probate and record in the Court of Common Pleas for the county of Hamilton, and State of Ohio, and a correct copy thereof hereto attached and marked A, is made part of this agreement. 3. That upon the decease of the said Andrew Ferris, the said Elizabeth A. Ferris entered into possession of the said real estate described in the declation and consent rule, being the same described in the said will, and on the sixth day of March, eighteen hundred and fifty was married to Francis A. Parrish. 4. That on the seventeenth day of August, eighteen hundred and fifty-two, the said Elizabeth A. Parrish, formerly Ferris, had issue of the said marriage born alive, a child which lived only about one hour, which was the only issue she ever had.

5. That on the twenty-second day of August, eighteen hundred and fifty-two, the said Elizabeth A. Parrish duly made and executed her last will and testament, and afterwards died, leaving no child or children surviving her.

6. That on the twenty-second day of September, eighteen hundred and fifty-two, the said last will of the said Elizabeth A. Parrish was duly admitted to probate and record in the probate court of Hamilton County, a copy of which will is hereto attached, marked B, and made part of this agreement.

7. That the defendants in this action are the brothers and sisters of the said Andrew Ferris, or their heirs at law.

8. That on the thirteenth day of May, eighteen hundred and fifty-three, the defendants in the present action brought an action of ejectment in the Court of Common Pleas for the county of Hamilton, and State of Ohio, against Richard Roe, as casual ejector, to which the said Francis A. Parrish was made real party defendant,

to recover possession of said real estate; a transcript of the proceedings in which action, in the said court and in the District Court for said county and State, to which it was removed by appeal, and in which it is still pending, is hereto attached, marked C, and made part of this agreement.

9. That on the thirteenth day of July, eighteen hundred and fifty-three, the said Francis A. Parrish filed his petition in the Court of Common Pleas for said county and State against the defendants in the present action, to quiet his title and possession to the said real estate; a transcript of the proceedings and final order in which is hereto attached, marked D, and made part of this agreement.

10. That the said Francis A. Parrish died intestate on the ninth day of November, 1854, in possession of the said real estate, leaving his brothers and sisters Thomas Parrish, Esther A. Parrish, Joseph C. Parrish, and William M. Parrish, his heirs at law.

11. That prior to the commencement of this suit, the said Thomas Parrish, Esther A. Parrish, and William M. Parrish, by deed duly executed and delivered, conveyed all their title and interest in said real estate to the said Joseph C. Parrish, the lessor of the plaintiff in this action, in fee simple.

12. That on or about the first day of March, 1858, the said Joseph C. Parrish and his grantors, his brothers and sister being in possession of the said real estate by their tenants, the defendants in this action, without any writ or process of law, took, and have ever since remained in possession of the same."

And this was all the evidence offered by either party on the trial of the cause. Whereupon the court charged the jury, that upon the evidence aforesaid, the plaintiff was not entitled in law to recover possession of the premises described in his declaration; to which charge of the court the plaintiff, by his counsel, excepted, as erroneous in matter of law, and prayed that said exception might be reduced to writing, signed, sealed, allowed, and made part of the record, which is accordingly done.

C. H. LEAVITT. [SEAL.]

Exhibit A, above referred to, is in the words and figures following, to wit:—

(Exhibit A.)

"Copy of the last *Will and Testament* of Andrew Ferris, deceased, pleas at Cincinnati in the county of Hamilton and State of Ohio, before the Honorable Samuel M. Hart, President Judge of the Ninth Judicial Circuit of the Court of Common Pleas of the State of Ohio, the Honorable Robert Moore, John A. Wiseman, and James Saffin, his associates, Judges of the same court, within and for the county aforesaid, at the term of May, Anno Domini eighteen hundred and forty-nine.

The State of Ohio, Hamilton County, *ss.*

Be it remembered, that heretofore, to wit, on the 26th day of June, in the term of May, Anno Domini eighteen hundred and forty-nine, of the Court of Common Pleas of Hamilton county aforesaid, the last will and testament of Andrew Ferris, deceased, was duly presented to the Judges of our said court for probate, closed in the words and figures following, to wit: I, Andrew Ferris, of the county of Hamilton and State of Ohio, being of sound and disposing mind, but of feeble health of body, and knowing the uncertainty of life, ho hereby make this my last will and testament, as follows:—

First. I desire that the expenses of my last sickness and funeral and all my just debts be first paid.

Second. I give to my daughter Elizabeth A., the use of the two hundred acres more or less, of land on which I now live—it being the northeast quarter of section No. twenty-two of the fourth township and the second fractional range in the Miami purchase; and one share of the Morrison estate on the southeast quarter of section No. twenty-three of said township; also 67 acres more or less in section No. twenty-one of said township—it being the west half of the northeast quarter of said section exclusive of the forfeiture—during her natural lifetime, to have full use and control of the same with the appurtenances to the same belonging, as long as she shall live.

Thirdly. I give and bequeath to my daughter Elizabeth's children (if she shall have any heirs), their heirs and assigns forever, all of the above described two hundred and 67 acres of land after Elizabeth is done using or occupying it and at Elizabeth's death.

Fourthly. If my daughter Elizabeth A. shall die without children, then and in that case, I give and bequeath the said two hundred and 67 acres of land above described, to my brothers and sisters, their heirs and assigns forever, after the death of Elizabeth A. as aforesaid.

Fifthly and lastly. I hereby appoint John J. Ferris, Andrew J. Ferris, and my daughter Elizabeth A. executors to settle my whole estate.

Given under my hand and seal, this seventh day of June, A. D. 1849.

ANDREW J. FERRIS. [SEAL.]

Signed and sealed in presence of us, who by his request have hereunto subscribed our names as witnesses thereto. The words "the use of," in the tenth line, and "67," after hundred in the 27th line, were added before signing. JOHN L. HOSBROOK,
C. S. EBERSOLL.

The following is the minute entry made in the aforesaid term and year: Admitting said will, &c., to record, the last will and testament of Andrew Ferris was presented to the court for probate; whereupon

Christian Ebersoll and John L. Hosbrook, the subscribing witnesses thereto, personally appeared in open court and were duly sworn and examined by the court, and their testimony was reduced to writing and filed; and it appearing to the court from the testimony of said witnesses that the said Andrew Ferris was, at the time of executing said will, of legal age, of sound and disposing mind and memory, and under no undue or unlawful restraint whatsoever, order said will and proof so taken to be admitted to record.

State of Ohio, Hamilton County, *ss.*

I, J. B. Warren, sole Judge of the Probate Court within and for the county of Hamilton and State of Ohio, do hereby certify that the above and foregoing is a true copy of the last will and testament of Andrew Ferris, dec'd, and of the order of admitting said will to probate as the same, remains of record in my office.

Witness my hand and seal of said Probate Court, at Cincinnati, in the county and State aforesaid, this 11th day of November, A. D. 1852.

J. B. WARREN,
[SEAL.] Probate Judge."

Exhibit B, referred to as aforesaid, is in the words and figures following, to wit:—

(Exhibit B.)

"Copy of the last will and testament of Elizabeth A. F. Parrish, dec'd.

In the name of God, amen. I, Elizabeth A. F. Parrish, of Hamilton county and State of Ohio, do make and publish this my last will and testament in manner and form following, to wit: 1st. I give, devise, and bequeath to my beloved husband, Francis A. Parrish, his heirs and assigns forever, all the real estate to which I am entitled, either in possession, remainder, or reversion, and whether in Hamilton county aforesaid or elsewhere, together with all my personal estate, consisting of personal property, money, bills, notes, bonds, mortgages, or of whatever name or nature the same may be, and whether the same be held jointly with my said husband or otherwise, together with all judgments or decrees in which I have any interest. 2d. It is further my will and desire that my said husband shall occupy and possess for the term of his natural life the two hundred acres more or less of land on which we now live—it being the northeast quarter of section No. twenty-two of the fourth township of the second fractional range in the Miami purchase; and one share of the Morrison estate on the southeast quarter of section No. twenty-three of said township; also, sixty-seven acres more or less in section No. twenty-one of said township—it being the west half of the northeast quarter of said section exclusive of the forfeiture; inasmuch as the same has been improved by us with a view to occupying it during our joint and several lives, provided that this devise is not to prejudice my said husband in taking any greater

estate therein to which he may be entitled. Lastly. I do hereby constitute and appoint my beloved husband, Francis A. Parrish, sole executor of this my last will and testament, hereby revoking and annulling any other or former will by me made; and it is my request and direction that my said executor may not be required to give bonds for the performance of trust as executor aforesaid. In testimony whereof I have hereunto set my hand and seal, this twenty-second day of August, in the year of our Lord one thousand eight hundred and fifty-two.

ELIZABETH A. F. PARRISH. [SEAL.]

Signed, sealed, published, and declared by the said Elizabeth A. F. Parrish to be her last will and testament, in our presence, and in presence of each other. PHILIP J. BUCKNER,
MILO BLACK.

The State of Ohio, Hamilton County, *ss.*

Be it remembered, that at a session of the Probate Court within and for the county of Hamilton, in the State of Ohio, held in Cincinnati, in the county and State aforesaid, on the 22d day of September, A. D. 1852, an order was made by the said court, and entered upon the journal thereof, in the words and figures following, to wit:—

In the matter of the last Will and Testament of Elizabeth A. F. Parrish, deceased.

The last will and testament of Elizabeth A. F. Parrish, late of this county, deceased, being presented to the court for probate, Milo Black and Philip J. Buckner, the subscribing witnesses thereto, came before the court, and after being duly sworn, the said witnesses were examined in open court, and their testimony reduced to writing and filed with said will, and it appearing to the court that the said will was duly attested and executed, and that the testator at the time of executing the same was of full age and of sound mind and memory and not under any restraint, the court admit the said will and proof so taken to probate, according to the statute in such cases.

The State of Ohio, Hamilton County, *ss.*

I, J. B. Warren, sole Judge of the Probate Court within and for the county of Hamilton and State of Ohio, do hereby certify that the above and foregoing is a true copy of the last will and testament of Elizabeth A. F. Parrish, deceased, and of the order admitting the said will to probate, as the same remain of record in my office.

Witness my hand and the seal of said Probate Court at Cincinnati in the county and State aforesaid, this 11th day of November, A. D. 1852. [SEAL.] J. B. WARREN, Probate Judge."

Exhibit C, above referred to, is in the words and figures following, to wit:—

(Exhibit C.)

"Pleas at Cincinnati, in the county of Hamilton and State of Ohio, before the District Court of the State of Ohio, in and for Hamilton aforesaid, the Honorable Joseph R. Swan, one of the Judges of the Supreme Court of the State of Ohio, presiding, and the Honorable A. G. W. Carter, Patrick Mallow, and M. W. Oliver, Judges of the Court of Common Pleas in and for the said county, his associates, at the term of October, in the year of our Lord one thousand eight hundred and fifty-eight.

JOHN DOE, ex dem. et al.
against
RICHARD ROE et al. } 1374. Appeal from Ham. Com. Pleas.

Be it remembered, that heretofore, to wit, on the eleventh day of March, in the year of our Lord eighteen hundred and fifty-eight, a certain transcript of the docket and journal entries of the proceedings and judgment of the Court of Common Pleas of Hamilton County, Ohio, in a certain cause lately therein pending, wherein John Doe, ex dem. et al. were plaintiffs, and Richard Roe et al., defendants, was filed in the office of the Clerk of this Court, to wit: The District Court of the State of Ohio, in and for said county: which transcript and the original pleadings, &c., sent up with the same from the court below, are in the words and figures following, to wit:—

(Transcript.)

Transcript of the proceedings had in the Court of Common Pleas in and for the county of Hamilton and State of Ohio, in the case No. 9058, wherein John Doe ex dem. Eliphalet Ferris, John Ferris, John F. Stites, Sarah Muchmore and her husband David Muchmore, Hanna Jennings and her husband Serenas Jennings, Benjamin Stites, Deborah Bramble and her husband Ayres L. Bramble, Phebe Anderson and her husband David Anderson, Juliet A. Lusk, Elizabeth V. Lusk, Milton H. Lusk, Mary Ferris and Solomon Ferris her husband, Hezekiah Stites, Ery Jewett, Andrew J. Ferris, Charles K. Ferris, Ruth Ferris, Phebe Ferris, Joseph Ferris, Isaac Ferris, Joseph D. Ferris, Mary Keeler and her husband William H. Keeler, Mary F. Bishop, Mary Johnson, Deborah Hopkins and her husband Gilbert Hopkins, Peter Ferris, Samuel Ferris, Solomon Peck, Jeduthan Peck, *vs.* Richard Roe, William Settler. In ejectment. 9058.

(Worthington and Matthews.)

1853. May 13th, declaration filed.

1853. May 18th, entry, making Francis A. Parrish defendant, filed 18 May, 1853, min. 107, Carter.

"On motion, it is ordered that Francis A. Parrish be made defendant herein in place of the now defendant, Richard Roe."

1853. May 18th, consent rule and plea filed.

1853. May term continued.

Cause continued from term to term to the term of January, A. D. 1855.

Cause continued from term to term to the term of November, 1857.

1857. Dec. 23, Nov. term, judgment on submission for plaintiff, min. 358."

JOHN DOE, on the demise of ELIPHALET FERRIS, JOHN FERRIS and Others, against FRANCIS A. PARRISH. } No. 9058.

It being suggested to the court, that the said Francis A. Parrish has departed this life intestate since the commencement of this suit, and that Thomas Parrish, Esther A. Parrish, Joseph C. Parrish and William H. Parrish, are his only heirs at law, who by consent of parties are ordered to be substituted as defendants, tenants in possession, in the place of the said Francis A. Parrish, deceased.

And this day came the said parties by their attorneys, and waiving the intervention of a jury, submit the premises to the court upon the issue joined between the parties, and the court being fully advised in the premises, do find that the said defendants are guilty of the trespass and ejectment laid to their charge in manner and form as the said John Doe has complained against them, and they do assess the damages of the said John Doe by reason thereof to one cent. Therefore it is considered that the said John Doe recover against the said defendants his term yet to come, of and in the tenements aforesaid, with the appurtenances and also his said damages as aforesaid, assessed together with his costs herein expended.

Notice of appeal by the defendants, and court fix the amount of the appeal bond at two hundred dollars.

1857. Dec. 30, appealed to District Court.

Bond in $200 00 filed No. 28, book 5.

Copy of Appeal Bond.

Know all men by these presents, that we, Thomas Parrish, of the county of Hamilton, and Joseph Parrish, of the county of Clermont and State of Ohio, are held and firmly bound unto John Doe, ex

dem., Eliphalet Ferris, John Ferris, John F. Stiles, Sarah Muchmore and her husband David Muchmore, Hannah Jennings and her husband Serenus Jennings, Benjamin States, Deborah Bramble and her husband Ayres L. Bramble, Phebe Anderson and her husband David Anderson, Juliet A. Lusk, Elizabeth V. Lusk, Milton H. Lusk, Mary Ferris and Solomon Ferris her husband, Hezekiah Stites, Ery Jewett, John Jewett, Andrew J. Ferris, Charles K. Ferris, Ruth Ferris, Phebe Ferris, Joseph Ferris, Isaac Ferris, Joseph D. Ferris, Mary Keeler and her husband William H. Keeler, Mary F. Bishop, Mary Johnson, and Deborah Hopkins, her husband Gilbert Hopkins, Peter Ferris, Samuel Ferris, Solomon Peck, Jeduthan Peck, plaintiffs, in the just and full sum of two hundred dollars, good and lawful money of the United States of America; for the payment whereof well and truly to be made unto the said plaintiffs above named, we and each of us do hereby bind ourselves and each of our heirs, executors, and administrators firmly by these presents, sealed with our seals and dated at Cincinnati this 30th day of December, Anno Domini eighteen hundred and fifty-seven.

Whereas, in the term of November, A. D. 1857, of the Court of Common Pleas, held at the court-house in the city of Cincinnati, within and for the county of Hamilton aforesaid, by the consideration of the Honorable M. W. Oliver, one of the judges of the said court sitting in separate session, the said plaintiff above named in an action of ejectment recovered a judgment against Thomas Parrish, Esther H. Parrish, Joseph C. Parrish, and William H. Parrish, defendants, tenants in possession for the term of said plaintiffs, yet to come in the tenements in the plaintiff's declaration described and the appurtenances thereto belonging, and for damages of one cent and plaintiff's costs; from which said judgment the said defendant has given notice of appeal to the District Court of the State of Ohio, next to be holden within and for the said county of Hamilton. Now, the condition of the above obligation is such that if the said defendants shall prosecute said appeal to effect, and abide and perform the order and judgment of the Appellate Court, and shall pay all moneys, costs, and damages which may be required of or awarded against the said defendants by the said court, then and in such case the said obligation to be void and of non-effect, otherwise to be and remain in full force and virtue in law.

THOMAS PARRISH, [SEAL.]
J. PARRISH. [SEAL.]

Signed, sealed, and acknowledged in the presence of E. Page.

Filed, December 30th, 1857, and approved.

THOMAS SPOONER,
Clerk of the Court of Common Pleas, Hamilton Co., Ohio.
By E. PAGE, Deputy.

The State of Ohio, Hamilton County, *ss.*

I, Richard H. Stone, clerk of the court of Common Pleas in and for the county of Hamilton and State of Ohio, do hereby certify that the foregoing is a true and correct transcript of the proceedings had in the foregoing case No. 9058, together with a true copy of the appeal bond record in my office. In testimony whereof, I have hereto set my hand and affixed the seal of the said court at Cincinnati, this 10th day of March, A. D. 1858.

[SEAL.] R. H. STONE,
Clerk of the Court of Common Pleas, Hamilton Co., Ohio.

(Declaration.)

Court of Common Pleas of Hamilton County, of the term of May, in the year of our Lord 1853.

The State of Ohio, Hamilton County, *scl.*

John Doe complains of Richard Roe for that Eliphalet Ferris, John Ferris, John F. Stites, Sarah Muchmore and her husband David Muchmore, Han Gennings and her husband Serenus Gennings, Benjamin Stites, Deborah Bramble and her husband Ayres S. Bramble, Phebe Anderson and her husband David Anderson, Juliet Anna Lusk, Elizabeth V. Lusk, Milton H. Lusk, Mary Ferris and her husband Solomon Ferris, Hezekiah Stites, Ery Jewett, John Jewett, Andrew J. Ferris, Charles K. Ferris, Ruth Ferris, Phebe Ferris, Joseph Ferris, Isaac Ferris, Joseph D. Ferris, Mary Keeler and her husband William H. Keeler, Mary F. Bishop, Mary Johnson, Deborah Hopkins and her husband Gilbert Hopkins, Peter Ferris, Samuel Ferris, Solomon Peck, Jeduthan Peck, tenants in common, on the first day of September, A. D. 1852, had demised to the said John the following lands and tenements, to wit: all that tract or parcel of land in the county of Hamilton, State of Ohio, lying and being in the twenty-second section in the fourth township, and second fractional range of townships in the Miami purchase, and known particularly on the plan of said township as being the northeast quarter of said section, and containing one hundred and sixty acres be the same more or less; also, the following other tract or parcel of land situate, lying, and being in the county of Hamilton, State of Ohio, being a part of the northwest quarter of said section, bounded as follows: beginning sixty-seven and a half poles south of the northeast corner of said quarter section, and running west one chain and thirty-four links, thence S. 1° E. 8 chains 75 links, thence west 66 links, S. 1° E. 14 chains 37½ links, thence east 2 chains to the southeast corner of said quarter section, thence N. 1° W. 23 chains 12½ links, to the place of beginning, containing 4 acres and 7 rods strict measure; also, the following other tract or parcel of land, situate, lying, and being in the county of Hamilton, State of Ohio, in Section No. 23, 4th township of the second fractional range of the

Miami purchase, beginning at the southeast corner of said section, thence N. 88° 45′ west, 40 chains 8 links, to the quarter section corner, thence N. 18′ E. 14 chains to a stake, from which a sugar 14 inches bears N. 76° 30′ E. 33 links, and a beech 11 inches S. 80° 30′ E. 22 links, thence S. 88° 45′ E. 8 chains, thence S. 18′ W. 4 chains 51 links, thence S. 88° 45′ E. 32 chains 3 links, to the section line, thence S. 9 chains 48 links, to the place of beginning, containing $41\frac{58}{100}$ths acres, be the same more or less. Also, the following other tract or parcel of land, situate, lying, and being in the county of Hamilton and State of Ohio, containing sixty-seven and one-half acres lying on the west side of the northwest quarter of section No. 21 of the 4th township of the second fractional range of the Miami purchase, beginning at the southwest corner of said quarter section, thence east $67\frac{8}{100}$ poles to a stake, thence N. 30′ W. 161 poles to a stake in the north line of the section, witness trees, a large beech, S. 6° 15′ E. 52 links, and a sugar S. 85° 30′ W. 13 links, thence west $67\frac{8}{100}$ poles to the northwest corner of said section, thence S. 161 poles to the beginning, and also one hundred messuages, one hundred cabins, one hundred barns, one hundred stables, one hundred orchards, one hundred out-houses, one hundred yards, one hundred gardens, one thousand acres of arable land, one thousand acres of meadow land, one thousand acres of pasture land, one thousand acres of land covered with water, and one thousand acres of other land with the appurtenances, situate in the said county of Hamilton: To have and to hold the same to the said John from the first day of September, in the year aforesaid, for and during the term of twenty-five years thence next ensuing.

By virtue of which demise the said John entered into the said tenements with the appurtenances, and was possessed thereof, for the term aforesaid. And the said John being so thereof possessed the said Richard afterwards, to wit, on the 4th day of September aforesaid, at the State and county aforesaid, and at the premises aforesaid with force and arms entered into the said tenements with the appurtenances, and ejected the said John therefrom, and other wrongs to the said John then and there did, to his damage one thousand dollars, and therefore he sues, &c.

By GEORGE R. SAGE, TAFT KEY & MALLOW,
his attorneys.

Wm. Settle.

Sir: I am informed that you are in possessson of, or claim title to, the premises in this declaration mentioned, or to some part thereof, and I being sued in this action as casual ejector, and having no title to the said premises, do advise you to appear at the next term of the Court of Common Pleas within and for the county of Hamilton, and State of Ohio, and make yourself defendant in my stead, otherwise judgment will then be entered against me by default, and you will be turned out of possession. RICHARD ROE.

May 6, 1853.

JOHN DOE ex dem. ELIPHALET FERRIS and others
vs.
RICHARD ROE.

Samuel J. Thomas, Deputy Sheriff of Hamilton County, a disinterested person, being duly sworn, makes oath and says, that on the 13th day of May, A. D. 1853, he did personally serve William Settle, tenant in possession of the premises in the within declaration mentioned or a part thereof, with a true copy of the within declaration and notice, and at the same time acquainted the said William Settle with the true intent and meaning of said declaration and notice, and of the service thereof.

SAML. J. THOMAS.

Sworn to and subscribed before me this 13th day of May, A. D. 1853.

J. M. McMASTER, Clerk.
By J. S. SNIDER, Deputy.

(No. 107.)

And afterwards, to wit, on the eighteenth day of May, A. D. 1853, "On motion it is ordered that Francis A. Parrish be made defendant herein, in place of the now defendant, Richard Roe.

(Consent rule and Plea.)

And the said Francis A. Parrish comes and confesses lease, entry and ouster, and admits himself to be in possession of the premises in the said declaration mentioned, and for plea, says he is not guilty of the trespass and ejectment in the said declaration mentioned, and of this he puts himself upon the country, and the said John Doe doth the like. WORTHINGTON & MATTHEWS, Attys.

Consent rule and plea, filed 18th May, 1853.

J. M. McMASTER, Clerk.

(Cont'd.)

And now here, to wit, at the term of April, in the year eighteen hundred and fifty-eight, of this court, this cause is continued to the next term thereof.

The State of Ohio, Hamilton County, *sct.*

I, Richard H. Stone, Clerk of the District Court of the State of Ohio within and for the county of Hamilton, do hereby certify that the foregoing is a true and correct transcript of the proceedings had in the aforesaid stated case, which cause is still pending in said District Court, as the same appears from the journals and files of the said court in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court, at Cincinnati, this 13th day of January, A. D. 1859.

R. H. STONE,
[SEAL.] Clerk of the District Court."

Exhibit D, hereinbefore referred to, is in the words and figures following, to wit:—

(Exhibit D.)

Pleas at Cincinnati, in the county of Hamilton and State of Ohio, before the District Court of the State of Ohio in and for the said county; the Hon. A. G. W. Carter presiding, and the Hon. M. W. Oliver and P. Mallow, his associate judges, at the April term, in the year eighteen hundred and fifty-seven of said court:—

Be it remembered, on the fourth day of May, A. D. 1854, the said defendants, Eliphalet Ferris et al., by their attorneys, filed with the clerk of said court, a transcript of the proceedings of the Court of Common Pleas, in the case of Francis A. Parrish against Eliphalet Ferris et al., which said transcript is in the words and figures following, to wit:—

Pleas at Cincinnati, in the county of Hamilton and State of Ohio, at the separate session of the Court of Common Please in and for the said county, before the Hon. B. Stallo, one of the judges of the said court, of the term of January, Anno Domini eighteen hundred and fifty-four.

FRANCIS A. PARRISH

vs.

ELIPHALET FERRIS, John Ferris, John T. Stites, Sarah Muchmore and her husband David Muchmore, Ann Jennings and her husband Serenus Jennings, Benjamin Stites, Deborah Bramble and her husband Ayres L. Bramble, Phoebe Anderson and her husband David Anderson, Juliet Ann Lusk, Elizabeth V. Lusk, Milton H. Lusk, Mary Ferris and her husband Solomon Ferris, Hezekiah Stiles, Evy Jewett, John Jewett, Andrew J. Ferris, Charles K. Ferris, Ruth Ferris, Phoebe Ferris, Isaac Ferris, Joseph D. Ferris, Mary Keeler and her husband William H. Keeler, Mary F. Bishop, Mary Johnson, Deborah Hopkins and her husband Gilbert Hopkins, Peter Ferris, Samuel Ferris, Solomon Peck, and Jonathan Peck, defendants.

(1853, July 13th.)

1853, July 13th. Petition filed. To 25th July, 1853.

(Received writ.)

1853, July 13th, Summons issued; 1853, August 22, Second summons issued.

(Sheriff's return on summons.)

As to A. & E. Jewett (minors) to 24th September, 1853.

1853, July 22. Served Eliphalet Ferris, Sarah Muchmore, David Muchmore, Deborah Bramble, Mary Ferris, Charles K. Ferris, Evy Jewett, John Jewett, Andrew J. Ferris, Solomon Ferris, Ruth Ferris, Phoebe Ferris, Joseph Ferris, by copies personally; and Phoebe

Anderson, David Anderson, and Hezekiah Stites, and Ayres Bramble, by copies at residence. BEN. HIGDON, Sheriff.
By A. SCHOOMAKER, Dep'y.

Fees: $12 30.

The balance of the defendants, named in the within notice, are not residents of Hamilton County. Not found.
BENJ'N HIGDON, Sh'ff.
By A. SCHOOMAKER, Dep'y.

I acknowledge service of this writ of summons.
August 1, 1853. JOHN F. STITES.

1853, August 13th. Default for answer.

(Return 2d Summons.)

1853, August 27th. Sheriff's return on 2d summons—served John Jewett and Evy Jewett, and their guardian Priscilla Ferris, by copies personally. B. HIGDON, Sh'ff.
By A. GRIMS, Dep'y.

Fees, $1 75.

1853, Sept. 1. Answer of C. K. Ferris et al., and counter claim filed.

1853, Sept. 2. Affidavit of non-residence.

Min. 136, &c., for publication filed.

Min. 136.—Woodruff—October T., 1853.

This day came the plaintiff, and produced to the court his affidavit heretofore filed in the office of the clerk of this court, to wit, on the second day of September, A. D. eighteen hundred and fifty-three, showing that of the above-named defendants, the following, to wit: John Ferris, Ann Jennings and her husband Serenus Jennings, Benjamin Stites, Juliet Ann Lusk, Elizabeth V. Lusk, Milton H. Lusk, Isaac Ferris, Joseph D. Ferris, Mary Keeler and her husband William H. Keeler, Mary F. Bishop, Mary Johnson, Deborah Hopkins and her husband Gilbert Hopkins, Peter Ferris, Samuel Ferris, Solomon Peck, and Jonathan Peck, are now residents of the State of Ohio, and that service of summons could not be made upon them within this State; and that above-entitled cause is an action which relates to, and the subject of which is, real estate situated in this county and State, and described in the petition filed therein, in and to which the above-named defendants claim to have some interest and title; and the relief demanded whereby consists in excluding them from any interest therein; and also the affidavit of James E. McCall, principal clerk for H. H. Robinson, publisher of the Cincinnati "Weekly Enquirer," a newspaper printed in the county of Hamilton and State of Ohio, and of general circulation therein, showing that an advertisement was published in said paper for six consecutive weeks, from the sixth day of September, in the year aforesaid, con-

taining a summary statement of the object and prayer of the said petition, mentioning the court wherein it was filed, and notifying the said non-resident defendants above named, that they were required to answer the same on or before the fifth day of November, in the year eighteen hundred and fifty-three ; and also a copy of the said advertisement—all which the court, having seen and examined, hereby approve and order to be filed.

Min. 27.—Woodruff—October Term, 1853.

On proper cause shown by the counsel of defendants, Eliphalet Ferris, John Ferris, John F. Stites, Sarah Muchmore and her husband David Muchmore, Ann Jennings and her husband Serenus Jennings, Benjamin Stites, Deborah Bramble and her husband Ayres L. Bramble, Phoebe Anderson and her husband David Anderson, Mary Ferris and her husband Solomon Ferris, Hezekiah Stites, Isaac Ferris, Joseph D. Ferris, Mary Keeler and her husband William H. Keeler, Mary F. Bishop, Deborah Hopkins and her husband Gilbert Hopkins, Peter Ferris, Samuel Ferris, Solomon Peck, Jonathan Peck, Mary Johnson, Juliet Ann Lusk, Elizabeth V. Lusk, Milton H. Lusk, Eri Jewett, and John Jewett, the answer of said defendants being due on the fifth of November, A. D. 1853, the court grant said defendants two weeks' further time to file their answer to the petition of plaintiff. The court, also, on application of Mary Johnson, Juliet Anna Lusk, Eliphalet V. Lusk, Eri Jewett, and John Jewett, minor defendants, made their counsel appoint David Anderson guardian ad litem for said minor defendants.

(Min. 298.)

Min. 298.—Woodruff—October Term, '53.

On motion, it is ordered that the entry in this case made on the 4th day of March, 1853, by which David Anderson was appointed the guardian ad litem to Ery Jewett and John Jewett, minor defendants, be set aside, and therefore Charles K. Ferris is appointed the guardian ad litem for said minors, who appears and accepts the said appointment.

The Term of October continued.

(Min. 44, Stallo, Jan'y Term, 1854.)

"In this case, on proper cause shown by counsel, leave is granted to defendants to withdraw, amend, refile their answer heretofore filed, and an order is hereby made to that effect. 1854, Jan'y 25, ans'r of plaintiff to counter claim of E. Ferris, 1854, Jan'y 25, ans'r of plaintiff to counter claim of A. J. Ferris, Min 209, Sallo, Jan'y term, 1854, Mch. 22. This cause came on for hearing this day upon the petition of the plaintiff, the answer and counter claims of Mary Johnson, Juliet Ann Lusk, Elizabeth V. Lusk and Milton H. Lusk, minors, by their guardian ad litem, David Anderson, and Ery Jewett and John Jewett, minors by their guardian ad litem,

Charles K. Ferris, and of all the other defendants, all of whom have been duly served with process, or notified by publication according to law; and the reply of the plaintiff to the said counter claims, and the premises being submitted to the court upon the testimony and proof, and having been fully argued by counsel, the court thereupon find that Andrew Ferris, on the seventh day of June, 1849, then being seised in fee simple of the real estate described in the petition, situate in Hamilton County, in due form of law, made his last will, whereby he devised the said real estate as follows: "I give to my daughter, Elizabeth A., the use of the said real estate during her natural lifetime, to have full use and control of the same, with the appurtenances to the same belonging, as long as she shall live; I give and bequeath to my daughter Elizabeth's children (if she shall have any heirs), their heirs and assigns forever, the said real estate after Elizabeth is done using or occupying it, and at Elizabeth's death. If my daughter Elizabeth A. shall die without children, then and in that case I give and bequeath said real estate to my brothers and sisters, their heirs and assigns forever, after the death of Elizabeth A., as aforesaid. That the will of the said Andrew Ferris, after his death, to wit, on the 26th day of June (1849), eighteen hundred and forty-nine, was duly proved and ordered to be recorded as such by the Court of Common Pleas in and for the county of Hamilton; that the said Elizabeth A. Ferris, the daughter of the said Andrew Ferris mentioned in his will as aforesaid, at the time of the making of the said will, and of the death of the said Andrew Ferris, was unmarried; and after his death, on the day of , eighteen hundred and fifty, intermarried with the plaintiff, Francis A. Parrish, having taken possession of the said real estate as described thereof under the will aforesaid; that on the day of , eighteen hundred and fifty-two, the said Elizabeth A. Parrish gave birth to a living child, who died, leaving no children and no brothers and sisters in the lifetime of its mother, the said Elizabeth A. Parrish; that on the 22d day of August, eighteen hundred and fifty-two, the said Elizabeth A. Parrish made her last will in due form, whereby she devised all her estate, both real and personal, to her said husband, Francis A. Parrish, the plaintiff, his heirs and assigns forever; that the said Elizabeth A. Parrish having died without having had any other child or children than as above stated, her will as aforesaid was duly proved and submitted to record on the 22d day of Sept., eighteen hundred and fifty-two, by the Probate Court of Hamilton county; that the plaintiff has had and still has possession of said real estate since the death of the said Elizabeth A. Parrish, his wife; that Eliphalet Ferris and John Ferris, defendants, are brothers of the said Andrew Ferris, deceased; that John F. Stites, Sarah Muchmore, Ann Jennings, Benj. Stites, Deborah Bramble and Phœbe Anderson, are children and heirs at law of Ann Stites, deceased, who was a sister of the said Andrew Ferris, deceased;

that Mary Ferris and Hezekiah Stites are children and heirs at law of Deborah Stites, deceased, who was a sister of Andrew Ferris, deceased; that Juliet Ann Lusk, Elizabeth V. Lusk and Milton H. Lusk, are grandchildren and heirs at law of Isaiah Stites, deceased, who was one of the children of the above named Deborah Stites, deceased; that Isaac Ferris, Joseph D. Ferris and Mary Keeler, are children and heirs at law of Jonathan Ferris, deceased, who was one of the brothers of the said Andrew Ferris, deceased; that Mary Bishop and Mary Johnson are the sole heirs at law of Ethan Ferris, deceased, who was one of the brothers of Andrew Ferris, deceased; that Charles K. Ferris, Andrew J. Ferris, Ruth Ferris, Phœbe Ferris and Joseph Ferris, Ery Jewett and John Jewett, are the sole heirs at law of Joseph Ferris, deceased, who was one of the brothers of Andrew Ferris, deceased. And thereupon the court find that, by the true construction of the will of the said Andrew Ferris, deceased, an estate for life was thereby devised to his daughter, the said Elizabeth A. Parrish, with a contingent remainder in fee to any child or children she might thereafter have, with a further alternative contingent remainder in fee to the brothers and sisters of Andrew Ferris, deceased, to take effect and become vested in the event that the first contingent remainder should not vest; that upon the birth of the child of the said Elizabeth A. Parrish, the said first contingent remainder vested in the said child an estate in fee simple whereby the said second and alternative remainder in fee, in the brothers and sisters of the said Andrew Ferris, deceased, was cut off and destroyed, and forever prevented from vesting and taking effect; that upon the death of the said child, the remainder in fee in the said real estate vested in the said child came to and was cast by virtue of the Statute of Descents upon the said Elizabeth A. Parrish, its mother, who thereby became seised in fee simple of the said real estate, which was transmitted and conveyed by the force of her last will to her said husband, Francis A. Parrish, the pl'ff; whereupon, the foregoing being all the matters of fact or law submitted to or found by the court, the court declare and adjudge that the said plaintiff has the legal title in fee simple to the said real estate described in said petition, and that the said defendants have not any title or interest in the same whatsoever, nor in any part thereof, nor has any or either of them; and the court do thereupon order and adjudge that the plaintiff be quieted in his possession and title to the said real estate, and perpetually enjoin the said defendants and all and each of them from setting up any claim or title to the same advise to the plaintiff and this judgment, and from seeking to disturb the said plaintiff in the quiet possession of the same; and that judgment be rendered against the said defendants upon their said counter claims; that they are not entitled to the possession of the said real estate; and also, that they pay the costs of this cause.

Notice of appeal by the defendants, bond fixed at $300 00; ap-

pealed to District Court 11th April, 1854. Bond and security given. Bond No. 217.

Copy of Bond in Case the 9617.

(Bond the 217.)

Know all men by these presents, thas we, Eliphalet Ferris, John Ferris, John F. Stites, Sarah Muchmore and her husband David Muchmore, Ann Jennings and her husband Serenus Jennings, Benjamin Stites, Deborah Bramble and her husband Ayres Bramble, Phœbe Anderson and her husband David Anderson, Juliet Ann Lusk, Elizabeth V. Lusk, Milton H. Lusk, Mary Ferris and her husband Solomon Ferris, Hezekiah Stites, Ery Jewett, John Jewett, Andrew J. Ferris, Charles K. Ferris, Ruth Ferris, Phœbe Ferris, Joseph Ferris, Isaac Ferris, Joseph D. Ferris, Mary Keeler and her husband William H. Keeler, Mary F. Bishop, Mary Johnson, Deborah Hopkins and her husband Gilbert Hopkins, Peter Ferris, Samuel Ferris, Solomon Peck, and Jonathan Peck, def'ts, and Scindest Byl, of the county of Hamilton and State of Ohio, are held and firmly bound unto Francis A. Parrish, plaintiff, in the just and full sum of three dollars, good and lawful money of the United States of America, for the payment whereof, well and truly to be made unto the said Francis A. Parrish, defendant, we do hereby bind ourselves, and each of our heirs, executors, and administrators firmly by these presents. Sealed with our seals, and dated at Cincinnati, this 1st day of April, Anno Domini eighteen hundred and fifty-four. Whereas in the Term of January, A. D. 1854, of the Court of Common Pleas, held at the court-house in the city of Cincinnati, within and for the county of Hamilton aforesaid, by the consideration of the Hon. B. Stallo, one of the judges of the said court, sitting in separate session; the said Francis A. Parrish recovered a judgment against the said Eliphalet Ferris, John Ferris, John F. Stites, Sarah Muchmore and her husband David Muchmore, Ann Jennings and her husband Serenus Jennings, Benj'n Stites, Deborah Bramble and her husband Ayres S. Bramble, Phœbe Anderson and her husband David Anderson, Juliet Ann Lusk, Elizabeth V. Lusk, Milton H. Lusk, Mary Harris and her husband Solomon Harris, Hezekiah Stites, Ery Jewett, John Jewett, Andrew J. Ferris, Charles K. Ferris, Ruth Ferris, Phœbe Ferris, Joseph Ferris, Isaac Ferris, Joseph D. Ferris, Mary Keeler and her husband William H. Keeler, Mary F. Bishop, Mary Johnson, Deborah Hopkins and her husband Gilbert Hopkins, Peter Ferris, Samuel Ferris, Solomon Peck and Jonathan Peck, defendants, that the said plaintiff be quieted in his possession and title to the said real estate, and perpetually enjoin the said defendants, and all and each of them from setting up any claim or title to the same, adverse to the plaintiff and this judgment, and from seeking to disturb the said plaintiff in the quiet possession of the same, &c., and that said defendants pay the costs of this suit;

from which said judgment the said defendants have given notice of appeal to the District Court of the State of Ohio next to be holden within and for the said county of Hamilton. Court-fix the bond at $300 00. Now the condition of the above obligation is such, that if the said Eliphalet Ferris, John F. Stites, Sarah Muchmore and her husband David Muchmore, Ann Jennings and her husband Serenus Jennings, Benj'n Stites, Deborah Bramble and her husband Ayres S. Bramble, Phœbe Anderson and her husband David Anderson, Juliet Ann Lusk, Elizabeth V. Lusk, Milton H. Lusk, Mary Ferris and her husband Solomon Ferris, Hezekiah Stites, Ery V. Jewett, John Jewett, Andrew J. Ferris, Charles K. Ferris, Ruth Ferris, Phœbe Ferris, Joseph Ferris, Isaac Ferris, Joseph D. Ferris, Mary Keeler and her husband William H. Keeler, Mary F. Bishop, Mary Johnson, Deborah Hopkins and her husband Gilbert Hopkins, Peter Ferris, Samuel Ferris, Solomon Peck and Jonathan Peck, defendants, shall prosecute said appeal to effect, and abide and perform the order and judgment of the appellate court, and shall pay moneys, costs, and damages which may be required of or awarded against the said defendants above named, by the said court, then and in such case the said obligation to be void and none effect; otherwise to remain in full force and virtue in law.

D. ANDERSON, [SEAL.]
SCINDERST BYL. [SEAL.]

Signed, sealed and acknowledged in presence of
J. S. SNIDER.

(Endorsed.)

Filed 11th April, 1855. J. M. McMASTER, Clerk,
By J. S. SNIDER, Dep'y.

The State of Ohio, Hamilton County, *ss.*

I, James McMaster, Clerk of the Court of Common Pleas in and for the county aforesaid, do hereby certify that the foregoing is a correct, full and true transcript of the docket and journal entries of the proceedings and judgment had in the case, Francis A. Parrish against Eliphalet Ferris and others, together with a full and correct copy of the appeal bond in said case.

In testimony whereof, I have hereunto set my hand and affixed the seal of the Court of Common Pleas, at Cincinnati, this 4th day of May, A. D. 1854.
[SEAL.]

J. M. McMASTER, Clerk,
By J. S. SNIDER, Deputy.

State of Ohio, Hamilton County, *ss.*
Court of Common Pleas.

THOMAS A. PARRISH, Plaintiff,
vs.
ELIPHALET FERRIS, JOHN FERRIS, JOHN F. STITES, SARAH MUCHMORE and her husband DAVID MUCHMORE, ANN JENNINGS and her husband SERENUS JENNINGS, BENJAMIN STITES, DEBORAH BRAMBLE and her husband AYRES S. BRAMBLE, PHŒBE ANDERSON and her husband DAVID ANDERSON, JULIET ANN LUSK, ELIZABETH V. LUSK, MILTON H. LUSK, MARY FERRIS and her husband SOLOMON FERRIS, HEZEKIAH STITES, ERY JEWETT, JOHN JEWETT, ANDREW J. FERRIS, CHARLES K. FERRIS, RUTH FERRIS, PHŒBE FERRIS, JOSEPH FERRIS, ISAAC FERRIS, JOSEPH D. FERRIS, MARY KEELER and her husband WILLIAM H. KEELER, MARY F. BISHOP, MARY JOHNSON, DEBORAH HOPKINS and her husband GILBERT HOPKINS, PETER FERRIS, SAMUEL FERRIS, SOLOMON PECK, and JONATHAN PECK, defendants.

Francis A. Parrish, the above-named plaintiff, represents that he is in possession, holding the same as absolute owner in fee simple, and with the legal title thereto, of the following described real estate, to wit:—

1. All that tract or parcel of land in the county of Hamilton, State of Ohio, lying and being in the twenty-second section, in the fourth township and second fractional range of townships in the Miami purchase, and known particularly on the plan of said township as being the northeast quarter of said section, and containing one hundred and sixty acres, be the same more or less.

2. Also the following other tract or parcel of land, situate, lying and being in the county of Hamilton, State of Ohio, being a part of the northwest quarter of said section, bounded as follows: Beginning sixty-seven and a half poles south of the northeast corner of said quarter section, and running west one chain and thirty-four links; thence south 1° eight chains seventy-five links; thence west sixty-six links; thence south 1° east, fourteen chains thirty-seven and a half links; thence east two chains, to the southwest corner of said quarter section; thence north 1° west, twenty-three chains twelve and a half links, to the place of beginning; containing four acres and seven rods, strict measure.

3. Also the following other tract or parcel of land situate, lying and being in the county of Hamilton, State of Ohio, in section number twenty-three, fourth township of the second fractional range of the Miami purchase: Beginning at the southeast corner of said section, thence north 88° 45′ west, forty chains eight links, to the quarter section corner; thence north 18′ east, fourteen chains, to a stake, from which a sugar fourteen inches bears north 76° 30′ east, thirty-three links, and a beech eleven inches south, 80° 30′ east,

twenty-two links; thence south 88° 45′ east, eight chains; thence south 18′ west, four chains fifty links; thence south 88° 45′ east, thirty-two chains three links, to the section line; thence south nine chains forty-eight links, to the place of beginning, containing forty-one $\frac{88}{100}$ acres, more or less.

4. Also the following other tract or parcel of land, situate, lying and being in the county of Hamilton and State of Ohio, containing sixty-seven and one-half acres, being on the west side of the northwest quarter of section number twenty-one of the fourth township of the second fractional range of the Miami purchase: Beginning at the southwest corner of said quarter section, thence east sixty-seven $\frac{8}{100}$ poles to a stake; thence north 30′ west, one hundred and sixty-one poles, to a stake in the north line of the section, witness trees, a large beech south 6° 15′ east, fifty-two links, and a sugar south 85° 30′ west, thirteen links; thence west sixty-seven $\frac{8}{100}$ poles, to the northwest corner of said section; thence south one hundred and sixty-one poles, to the beginning.

The plaintiff also represents that the above-named defendants, Eliphalet Ferris, John Ferris, John F. Stites, Sarah Muchmore and her husband David Muchmore, Ann Jennings and her husband Serenus Jennings, Benjamin Stites, Deborah Bramble and her husband Ayres S. Bramble, Phœbe Anderson and her husband David Anderson, Juliet Ann Lusk, Elizabeth V. Lusk, Milton H. Lusk, Mary Ferris and her husband Solomon Ferris, Hezekiah Stites, Ery Jewett, John Jewett, Andrew J. Ferris, Charles K. Ferris, Ruth Ferris, Phœbe Ferris, Joseph Ferris, Isaac Ferris, Joseph D. Ferris, Mary Keeler and her husband William H. Keeler, Mary F. Bishop, Mary Johnson, Deborah Hopkins and her husband Gilbert Hopkins, Peter Ferris, Samuel Ferris, Solomon Peck, and Jonathan Peck, claim to have some estate or interest in the above described real estate adverse to the plaintiff. The plaintiff also represents that of the above-named defendants, as he is informed, the following, to wit, Mary Johnson, Juliet Ann Lusk, Elizabeth V. Lusk and Milton H. Lusk, Ery Jewett and John Jewett, are under age, so far as the plaintiff knows have no guardians. The plaintiff prays that the said defendants may be compelled to show what estate or interest in the said real estate above described they or any of them claim to have; that the court will determine and declare that the said defendants nor any of them have any valid interest or estate in the said premises; that the court will order the title of the plaintiff thereto, and his possession thereof, to be established and quieted, and the said defendants to be perpetually enjoined from disturbing the same or setting up any claim adverse to the plaintiff thereto, and for such other relief as the nature of the case may require.

F. A. PARRISH.
WORTHINGTON & MATTHEWS, Att'ys.

State of Ohio, Hamilton County, *ss.*

Francis A. Parrish, the above named plaintiff, being duly sworn, makes oath and says, that he believes the statements in the foregoing petition to be true. F. A. PARRISH.

Subscribed and sworn to before me, this twelfth day of July, A. D. 1858, to which I hereby certify under seal.

ISAAC C. COLLINS, Notary Public.

Petition.

Ham. Com. Pleas. FRANCIS A. PARRISH, plaintiff,

vs.

ELIPHALET FERRIS, JOHN FERRIS, JOHN F. STITES, SARAH MUCHMORE and her husband DAVID MUCHMORE, ANN JENNINGS and her husband SERENUS JENNINGS, BENJAMIN STITES, DEBORAH BRAMBLE and her husband AYRES S. BRAMBLE, PHŒBE ANDERSON and her husband DAVID ANDERSON, JULIET ANN LUSK, ELIZABETH V. LUSK, MILTON H. LUSK, MARY FERRIS and her husband SOLOMON FERRIS, HEZEKIAH STITES, ERY JEWETT, JOHN JEWETT, ANDREW J. FERRIS, CHARLES K. FERRIS, RUTH FERRIS, PHŒBE FERRIS, JOSEPH FERRIS, ISAAC FERRIS, JOSEPH D. FERRIS, MARY KEELER and her husband WILLIAM H. KEELER, MARY F. BISHOP, MARY JOHNSON, DEBORAH HOPKINS and her husband GILBERT HOPKINS, PETER FERRIS, SAMUEL FERRIS, SOLOMON PECK, and JEDUATHAN PECK, defendants.

(Precipe.)

Issue summons returnable according to law.

July 12, 1853. WORTHINGTON & MATTHEWS, Attys.

Endorsed: Filed 13th July, 1853: petition.

J. M. McMASTER, Clerk.

(Summons.)

State of Ohio, Hamilton County, *ss.*

To the Sheriff of the county of Hamilton:—

You are commanded to notify Eliphalet Ferris, John Ferris, John F. Stites, Sarah Muchmore and her husband David Muchmore, Ann Jennings and her husband Serenus Jennings, Benjamin Stites, Deborah Bramble and her husband Ayres S. Bramble, Phœbe Anderson and her husband David Anderson, Juliet Ann Lusk, Elizabeth V. Lusk, Milton H. Lusk, Mary Ferris and her husband Solomon Ferris, Hezekiah Stites, Ery Jewett, John Jewett, Andrew J. Ferris, Charles K. Ferris, Ruth Ferris, Phœbe Ferris, Joseph Ferris, Isaac Ferris, Joseph D. Ferris, Mary Keeler and her husband William H. Keeler, Mary F. Bishop, Mary Johnson, Deborah Hopkins and her husband Gilbert Hopkins, Peter Ferris, Samuel Ferris, Solomon Peck, and Jeduathan Peck, defendants, that they have been sued by

Francis A. Parrish, plaintiff, in the Court of Common Pleas of Hamilton County, and that unless they answer by the 13th day of August, A. D. 1853, the petition of the said Francis A. Parrish, plaintiff, against them, filed in the clerk's office of said court, such petition will be taken as true, and judgment rendered accordingly. You will make due return of this summons, on the 25th day of July, A. D. 1853.

Witness my hand and seal of the said court at Cincinnati, this 13th day of July, A. D. 1853. J. M. McMASTER,
Clerk Court Common Pleas, Hamilton County, Ohio.
[SEAL of the Court of Common Pleas of Hamilton Co., Ohio.] By J. S. SNIDER, Deputy.

(Endorsed.)

Summons: To 25th day of July, 1853.
WORTHINGTON & MATTHEWS, Attys.

(Return.)

1853, July 22d. Served Eliphalet Ferris, Sarah Muchmore, David Muchmore, Deborah Bramble, Mary Ferris, Solomon Ferris, Ely Jewett, John Jewett, Andrew J. Ferris, Charles K. Ferris, Ruth Ferris, Phœbe Ferris, Joseph Ferris, by copies personally, and Phœbe Anderson, David Anderson, and Hezekiah Stites, and Ayres Bramble, by copies at residence. BENJAMIN HIGDON, Shff.
By A. SCHOOMAKER, Deputy.

The balance of the defendants named in the within notice are not residents of Hamilton County. Not found.
BENJAMIN HIGDON, Shff.
By A. SCHOOMAKER, Deputy.

I acknowledge service of this writ of summons, 1st August, 1853.
JOHN F. STITES.

(Precipe for 2 sum.)

1853, August 13th, default for answer, Ham. Com. Pleas, Francis A. Parrish, plaintiff, against Eliphalet Ferris and others, petition filed July 13, '53. Issue alias summons for John Jewett and Ery Jewett, minors, defendants.

Aug. 22, '53. WORTHINGTON & MATTHEWS, Attys.

Endorsed: Filed 22 August, 1853.
J. M. McMASTER, Clerk.

Filed May 4, 1854. J. M. McMASTER,
Clerk District Hamilton County.

(2d Summons.)

The State of Ohio, Hamilton County, *ss.*

To the Sheriff of the County of Hamilton:—

You are commanded, as before, to notify John Jewett and Ery

Jewett, minors, impleaded with Eliphalet Ferris, John Ferris, John F. Stites, Sarah Muchmore and her husband David Muchmore, Ann Jennings and her husband Serenus Jennings, Benjamin Stites, Deborah Bramble and her husband Ayres S. Bramble, Phœbe Anderson and her husband David Anderson, Juliet Ann Lusk, Elizabeth V. Lusk, Milton H. Lusk, Mary Ferris and her husband Solomon Ferris, Hezekiah Stites, Andrew J. Ferris, Charles K. Ferris, Ruth Ferris, Phœbe Ferris, Joseph Ferris, Isaac Ferris, Joseph D. Ferris, Mary Keeler and her husband William H. Keeler, Mary F. Bishop, Mary Johnson, Deborah Hopkins and her husband Gilbert Hopkins, Peter Ferris, Samuel Ferris, Solomon Peck, and Jeduathan Peck, that they have been served by Francis A. Parrish in the Court of Common Pleas of Hamilton County, and that unless they answer by the 24th day of September, A. D. 1853, the petition of the said Francis A. Parrish, against them, filed in the clerk's office of said court, such petition will be taken as true and judgment rendered accordingly. You will make due return of this summons on the 5th day of September, A. D. 1853.

Witness my hand and the seal of the said court at Cincinnati, this 22d day of August, A. D. 1853. J. M. McMASTER,
Clerk Court Common Pleas, Hamilton County, Ohio.
[SEAL.] By J. S. SNIDER, Deputy.

(Endorsement.)

Summons. To 5th day of September, 1853.
WORTHINGTON & MATTHEWS, Attys.

(Return.)

1853, August 27th, served John Jewett, Ery Jewett, and their guardian, Priscilla Ferris, by copies personally.
B. HIGDON, Sh'ff,
By JOHN GAINES, Dep'y.

(Ans. and Counter C. of C. B. Ferris et al.)

And now, heretofore, to wit, on the 1st day of September, 1853, come the above-named defendants, by their attorneys, and filed their answer and counter claim, clothed in the words and figures following, to wit: Hamilton Co. Court of Common Pleas, civil action, answer. The said Charles K. Ferris, Andrew J. Ferris, Ruth Ferris, Phebe Ferris, and Joseph Ferris, come and for answer to the said petition of the plaintiff says, that it is true that the said plaintiff is in possession of the premises in his petition set forth, but they deny that he holds the same as absolute owner in fee simple, and with the legal title thereto. They further say that the said premises heretofore belonged in fee simple to one Andrew Ferris, who died seised of them; that he, by his will duly probated and recorded in the Record of Wills of Hamilton County, Book 7, page 489, devised the use of said premises to his daughter, Elizabeth A., during her natural lifetime; that he gave said premises to his daugh-

ter's children, their heirs and assigns after Elizabeth was done using them, and at Elizabeth's death: and if she died without children, then and in that case he gave and bequeathed the same to his brothers and sisters, their heirs and assigns forever. That the said Elizabeth A. died without leaving any child; whereupon, as these respondents are advised, the said premises belonged to the brothers and sisters of said Andrew Ferris and their heirs; that he had five brothers and three sisters, and one of his brothers was Joseph Ferris, father of these respondents. Wherefore they pray that the plaintiff may be adjudged to have no claim to said premises, and that the court may adjudge to these respondents the share of said premises to them justly belonging.

STORER & GWYNNE, Attys.

State of Ohio, Hamilton County, *ss.*

Charles K. Ferris, one of the above-named defendants, being duly sworn, makes oath and says, that he believes the statements in the foregoing answer to be true. C. K. FERRIS.

Sworn to and subscribed this 27th day of August, A. D. 1853, before me, a notary public in and for said county. Witness my hand and seal notarial.

[SEAL.] JAMES BIRNEY, Notary Public.

(Afft. of Publ'n.)

And now here, to wit, on the 2d day of September, A. D. 1853, comes the said plaintiff, and filed his affidavit of non-residence and for publication, clothed in words and figures following, to wit:—

Francis A. Parrish the above named plaintiff, being sworn, says that of the above defendants the following, to wit, John Ferris, Ann Jennings and her husband Serenus Jennings, Benjamin Stites, Juliet Ann Lusk, Elizabeth V. Lusk, Milton H. Lusk, Isaac Ferris, Joseph D. Ferris, Mary Keeler and her husband William H. Keeler, Mary F. Bishop, Mary Johnson, Deborah Hopkins and her husband Gilbert Hopkins, Peter Ferris, Samuel Ferris, Solomon Peck, and Jeduathan Peck, are non-residents of the State of Ohio, and that service of a summons cannot be made upon them within this State, and that the above entitled case wherein they and the others above named are defendants in an action which relates to, and the subject of which is real estate, situated in the county of Hamilton and State of Ohio, and described in the petition filed therein, in and to which the above named defendants claim to have some interest and title, and the relief demanded whereby consists in excluding them from any interest therein. F. A. PARRISH.

Subscribed and sworn to before me this 2d day of September, A. D. 1853.

[SEAL.] WILLIAM D. JONES,
Notary Public.

(Proof of Publication.)

State of Ohio, Hamilton County, *ss.*
Court of Common Pleas.

FRANCIS A. PARRISH, Plaintiff,
vs.
ELIPHALET FERRIS, JOHN F. STITES, SARAH MUCHMORE and her husband DAVID MUCHMORE, ANN JENNINGS and her husband SERENUS JENNINGS, BENJAMIN STITES, DEBORAH BRAMBLE and her husband AYRES S. BRAMBLE, PHŒBE ANDERSON and her husband DAVID ANDERSON, JULIET ANN LUSK, ELIZABETH V. LUSK, MILTON H. LUSK, MARY FERRIS and her husband SOLOMON FERRIS, HEZEKIAH STITES, ERY JEWETT, JOHN JEWETT, ANDREW J. FERRIS, CHARLES K. FERRIS, RUTH FERRIS, PHŒBE FERRIS, JOSEPH FERRIS, ISAAC FERRIS, JOSEPH D. FERRIS, MARY KEELER and her husband WILLIAM H. KEELER, MARY F. BISHOP, MARY JOHNSON, DEBORAH HOPKINS and her husband GILBERT HOPKINS, PETER FERRIS, SAMUEL FERRIS, SOLOMON PECK, and JEDUATHAN PECK, defendants.

The above named John Ferris, Ann Jennings, and her husband Serenus Jennings, Benjamin Stites, Juliet Ann Lusk, Elizabeth V. Lusk, Milton H. Lusk, Isaac Ferris, Joseph D. Ferris, Mary Keeler and her husband William H. Keeler, Mary F. Bishop, Mary Johnson, Deborah Hopkins and her husband Gilbert Hopkins, Peter Ferris, Samuel Ferris, Solomon Peck, and Jeduathan Peck, defendants, who are non-residents of the State of Ohio, are hereby notified that on the thirteenth day of July, A. D. 1853, the above named plaintiff, Francis A. Parrish, filed his petition in the Court of Common Pleas in and for the county of Hamilton and State of Ohio against them and the other defendants named above, which petition sets forth that the said plaintiff is in possession, holding the same as absolute owner in fee simple and with the legal title thereto of the following described real estate, to wit:—

1. All that tract or parcel of land in the county of Hamilton, State of Ohio, lying and being in the twenty-second section, in the fourth township and second fractional range of townships, in the Miami purchase, and known particularly on the plan of said township as being the northeast quarter of said section, and containing one hundred and sixty acres, be the same more or less.

2. Also the following other tract or parcel of land, situate, lying and being in the county of Hamilton, State of Ohio, being a part of the northwest quarter of said section, bounded as follows: beginning sixty-seven and a half poles south of the northeast corner of said quarter section and running west one chain and thirty-four links, thence south one degree east eight chains seventy-five links, thence west sixty-six links, thence south one degree east fourteen chains thirty-seven and a half links, thence east two chains to the southeast

corner of said quarter section, thence north one degree west twenty-three chains twelve and a half links, to the place of beginning, containing four acres and seven rods strict measure.

3. Also the following other tract or parcel of land situate, lying and being in the county of Hamilton, State of Ohio, in section number twenty-three, fourth township, of the second fractional range of the Miami purchase, beginning at the southeast corner of said section, thence north eighty-eight degrees forty-five minutes, west forty chains eight links to the quarter section corner, thence north eighteen minutes, east fourteen chains to a stake, from which a sugar fourteen inches bears north seventy-six degrees and thirty minutes, east thirty-three links, and a beech eleven inches south eighty degrees thirty minutes, east twenty-two links, thence south eighty-eight degrees forty five minutes, east eight chains, thence south eighteen minutes, west four chains fifty-one links, thence south eighty-eight degrees forty-five minutes, east thirty-two chains three links to the section line, thence south nine chains forty-eight links to the place of beginning, containing forty-one and fifty-eight one-hundredths acres, more or less.

4. Also the following other parcel or tract of land, situate, lying and being in the county of Hamilton, State of Ohio, containing sixty-seven and a half acres, lying on the west side of the northwest quarter of section number twenty-one, of the fourth township of the second fractional range of the Miami purchase, beginning at the southwest corner of said quarter section, thence east sixty-seven and eight-hundredths poles to a stake, thence north thirty minutes west one hundred and sixty-one poles to a stake in the north line of the section; witness trees, a large beech south six degrees fifteen minutes east fifty-two links, and a sugar south eighty-five degrees thirty minutes west thirteen links, thence west sixty-seven and eight-hundredths poles to the northwest corner of said section, thence south one hundred and sixty-one poles to the beginning. And setting forth farther, that the said defendants above named claim to have some estate or interest in the said real estate adverse to the plaintiff; and the object and prayer of said petition is, that the court will declare and determine, that the said defendants have not any interest or title in the said real estate, and order the title of the plaintiff thereto and his possession thereof to be established and quieted; and the said defendants to be perpetually enjoined from disturbing the same, and setting up any claim thereto adverse to the plaintiff. The above named non-resident defendants are further notified, that they are required to answer the said petition on or before the fifth day of November, in the year eighteen hundred and fifty-three (November 5, 1853), otherwise they will be in default, and judgment taken accordingly.

WORTHINGTON & MATTHEWS,
September 6th, 1853. Attorneys for Plaintiff.

State of Ohio, Hamilton County, *ss.*

Personally appeared before me, a justice of the peace in and for Hamilton County, Ja's E. McCall, clerk for H. H. Robinson, publisher of the Cincinnati Weekly Enquirer, a newspaper of general circulation in said county, who, being sworn, says that the annexed advertisement was published in said paper for six consecutive weeks from the 6th day of September, 1853. JA'S E. McCALL.

Sworn and subscribed to before me, this 20th day of October, 1853. W. H. GETZENDANNER,
Justice of the Peace.

(Approval of Publication. Min. 136. Nov. T. Stallo.)

This day came the plaintiff, and produced to the court his affidavit heretofore filed in the office of the clerk of this court, to wit, on the second day of September, A. D. eighteen hundred and fifty-three, showing that of the above named defendants, the following, to wit, John Ferris, Ann Jennings and her husband Serenus Jennings, Benjamin Stites, Juliet Ann Lusk, Elizabeth V. Lusk, Milton H. Lusk, Isaac Ferris, Joseph D. Ferris, Mary Keeler and her husband William H. Keeler, Mary F. Bishop, Mary Johnson, Deborah Hopkins and her husband Gilbert Hopkins, Peter Ferris, Samuel Ferris, Solomon Peck and Jeduathan Peck, are non-residents of the State of Ohio, and that service of summons could not be made upon them within this State; and that the above entitled cause is an action which relates to, and the subject of which is, real estate situated in this county and State, and described in the petition therein, in and to which the above named defendants claim to have some interest and title, and the relief demanded whereby consists in excluding them from any interest therein; and also the affidavit of James E. McCall, principal clerk for H. H. Robinson, of the Cincinnati Weekly Enquirer newspaper, printed in the county of Hamilton and State of Ohio, and of general circulation therein, showing thereto an advertisement was published in said paper for six consecutive weeks from the sixth day of September in the year aforesaid, containing a summary statement of the object and prayer of the said petition, mentioning the court wherein it was filed, and notifying the said non-resident defendants above named, that they were required to answer the same on or before the 5th day of November, in the year eighteen hundred and fifty-three; and also a copy of the said advertisement, all which the court having seen and examined, hereby approve and order to be filed.

(Min. 270, Oct. T., Woodruff. Answer and Guardian *at litem* app'd.)

On proper cause shown by counsel of defendants, Eliphalet Ferris, John Ferris, John F. Stites, Sarah Muchmore and her husband David Muchmore, Ann Jennings and her husband Serenus Jennings, Benjamin Stites, Deborah Bramble and her husband, David Ander-

corner of said quarter section, thence north one degree west twenty-three chains twelve and a half links, to the place of beginning, containing four acres and seven rods strict measure.

3. Also the following other tract or parcel of land situate, lying and being in the county of Hamilton, State of Ohio, in section number twenty-three, fourth township, of the second fractional range of the Miami purchase, beginning at the southeast corner of said section, thence north eighty-eight degrees forty-five minutes, west forty chains eight links to the quarter section corner, thence north eighteen minutes, east fourteen chains to a stake, from which a sugar fourteen inches bears north seventy-six degrees and thirty minutes, east thirty-three links, and a beech eleven inches south eighty degrees thirty minutes, east twenty-two links, thence south eighty-eight degrees forty five minutes, east eight chains, thence south eighteen minutes, west four chains fifty-one links, thence south eighty-eight degrees forty-five minutes, east thirty-two chains three links to the section line, thence south nine chains forty-eight links to the place of beginning, containing forty-one and fifty-eight one-hundredths acres, more or less.

4. Also the following other parcel or tract of land, situate, lying and being in the county of Hamilton, State of Ohio, containing sixty-seven and a half acres, lying on the west side of the northwest quarter of section number twenty-one, of the fourth township of the second fractional range of the Miami purchase, beginning at the southwest corner of said quarter section, thence east sixty-seven and eight-hundredths poles to a stake, thence north thirty minutes west one hundred and sixty-one poles to a stake in the north line of the section; witness trees, a large beech south six degrees fifteen minutes east fifty-two links, and a sugar south eighty-five degrees thirty minutes west thirteen links, thence west sixty-seven and eight-hundredths poles to the northwest corner of said section, thence south one hundred and sixty-one poles to the beginning. And setting forth farther, that the said defendants above named claim to have some estate or interest in the said real estate adverse to the plaintiff; and the object and prayer of said petition is, that the court will declare and determine, that the said defendants have not any interest or title in the said real estate, and order the title of the plaintiff thereto and his possession thereof to be established and quieted; and the said defendants to be perpetually enjoined from disturbing the same, and setting up any claim thereto adverse to the plaintiff. The above named non-resident defendants are further notified, that they are required to answer the said petition on or before the fifth day of November, in the year eighteen hundred and fifty-three (November 5, 1853), otherwise they will be in default, and judgment taken accordingly.

WORTHINGTON & MATTHEWS,
September 6th, 1853. Attorneys for Plaintiff.

State of Ohio, Hamilton County, *ss.*

Personally appeared before me, a justice of the peace in and for Hamilton County, Ja's E. McCall, clerk for H. H. Robinson, publisher of the Cincinnati Weekly Enquirer, a newspaper of general circulation in said county, who, being sworn, says that the annexed advertisement was published in said paper for six consecutive weeks from the 6th day of September, 1853. JA'S E. McCALL.

Sworn and subscribed to before me, this 20th day of October, 1853. W. H. GETZENDANNER,
Justice of the Peace.

(Approval of Publication. Min. 136. Nov. T. Stallo.)

This day came the plaintiff, and produced to the court his affidavit heretofore filed in the office of the clerk of this court, to wit, on the second day of September, A. D. eighteen hundred and fifty-three, showing that of the above named defendants, the following, to wit, John Ferris, Ann Jennings and her husband Serenus Jennings, Benjamin Stites, Juliet Ann Lusk, Elizabeth V. Lusk, Milton H. Lusk, Isaac Ferris, Joseph D. Ferris, Mary Keeler and her husband William H. Keeler, Mary F. Bishop, Mary Johnson, Deborah Hopkins and her husband Gilbert Hopkins, Peter Ferris, Samuel Ferris, Solomon Peck and Jeduathan Peck, are non-residents of the State of Ohio, and that service of summons could not be made upon them within this State; and that the above entitled cause is an action which relates to, and the subject of which is, real estate situated in this county and State, and described in the petition therein, in and to which the above named defendants claim to have some interest and title, and the relief demanded whereby consists in excluding them from any interest therein; and also the affidavit of James E. McCall, principal clerk for H. H. Robinson, of the Cincinnati Weekly Enquirer newspaper, printed in the county of Hamilton and State of Ohio, and of general circulation therein, showing thereto an advertisement was published in said paper for six consecutive weeks from the sixth day of September in the year aforesaid, containing a summary statement of the object and prayer of the said petition, mentioning the court wherein it was filed, and notifying the said non-resident defendants above named, that they were required to answer the same on or before the 5th day of November, in the year eighteen hundred and fifty-three; and also a copy of the said advertisement, all which the court having seen and examined, hereby approve and order to be filed.

(Min. 270, Oct. T., Woodruff. Answer and Guardian *at litem* app'd.)

On proper cause shown by counsel of defendants, Eliphalet Ferris, John Ferris, John F. Stites, Sarah Muchmore and her husband David Muchmore, Ann Jennings and her husband Serenus Jennings, Benjamin Stites, Deborah Bramble and her husband, David Ander-

son, Mary Ferris and her husband Solomon Ferris, Hezekiah Stites, Isaac Ferris, Joseph D. Ferris, Mary Keeler and her husband William H. Keeler, Mary F. Bishop, Deborah Hopkins and her husband Gilbert Hopkins, Peter Ferris, Samuel Ferris, Solomon Peck, Jeduathan Peck, Mary Johnson, Juliet Ann Lusk, Elizabeth V. Lusk, Milton H. Lusk, Ery Jewett, and John Jewett, the answer of said defendants being due on the fifth of November, A. D. 1853, the court grant said defendants two weeks further time to file their answer to the petition of plaintiff. The court also, on application of Mary Johnson, Juliet Ann Lusk, Elizabeth V. Lusk, Milton H. Lusk, Ery Jewett, and John Jewett, minor defendants, made by their counsel, appoint David Anderson guardian *ad litem* for said minor defendants.

(Min. 298: app't of C. K. Ferris, Guardian *ad litem*.)

And now here, to wit, on the 8th day of December, 1853, before the Hon. E. Woodruff, the following entry was made, clothed in the words and figures following, to wit: On motion it is ordered that the entry in this case, made the 4th day of March, 1853, by which David Anderson was appointed the guardian *ad litem* to Ery Jewett and John Jewett, minor defendants, be set aside, and thereupon Charles K. Ferris is appointed the guardian *ad litem* for said minors, who appears and accepts the said appointment.

(Answer.)

And now here, to wit, on the 11th day of November, A. D. 1853, come the defendants by their attorneys, and file their answer, clothed in the words and figures following, to wit:—

Eliphalet Ferris, John Ferris, John F. Stites, Sarah Muchmore and her husband David Muchmore, Ann Jennings and her husband Serenus Jennings, Benjamin Stites, Deborah Bramble and her husband Ayres L. Bramble, Phœbe Anderson and her husband David Anderson, Mary Ferris and her husband Solomon Ferris, Hezekiah Stites, Isaac Ferris, Joseph D. Ferris, Mary Keeler and her husband William H. Keeler, Mary F. Bishop, Deborah Hopkins and her husband Gilbert Hopkins, Peter Ferris, Samuel Ferris, Solomon Peck, Jeduathan Peck, Mary Johnson, Juliet Ann Lusk, Elizabeth V. Lusk, Milton H. Lusk, by David Anderson, their guardian *ad litem*, Ery Jewett, and John Jewett, minors, who defend by Charles K. Ferris, their guardian for the suit, defendants, in answer to the petition of Francis A. Parrish, plaintiff, say:—

They admit that the plaintiff is in possession of the premises described in his petition, but denies that he is the absolute owner in fee simple of the same with the legal title thereto, or that he has any right to the possession thereof. Defendants say that the fee simple of the premises referred to was vested in Andrew Ferris, deceased, and that he died seised of them; that he by his last will and testament (a true copy of which is hereto attached), duly probated and

recorded in the Record of Wills of Hamilton County, Book 7," page 489, devised the said premises as follows: "I give to my daughter Elizabeth A. the use of the two hundred acres more or less of land, on which I now live—it being the northeast quarter of section No. twenty-two of the fourth township of the second fractional range in the Miami purchase; and one share of the Harrison estate, on the southeast quarter of section No. twenty-three of said township; also, 67 acres more or less in section No. twenty-one of said township—it being the west half of the northeast quarter of said section exclusive of the forfeiture—during her natural lifetime. To have full use and control of the same with the appurtenances thereto the same belonging, as long as she shall live.

"Thirdly. I give and bequeath to my daughter Elizabeth's children (if she shall have any heirs), their heirs and assigns forever, all of the above described two hundred and sixty-seven acres of land, after Elizabeth is done using or occupying it and at Elizabeth's death.

Fourthly. If my daughter Elizabeth A. shall die without children, then and in that case, I give and bequeath the said two hundred and 67 acres of land (above described) to my brothers and sisters, their heirs and assigns forever, after the death of Elizabeth A. as aforesaid."

Defendants further say that after the death of Andrew Ferris, Elizabeth A., who was his only surviving child, intermarried with the plaintiff, Francis A. Parrish; that one child was born of this marriage and died, and afterwards the mother, Elizabeth A., died without children. Defendants further say that Andrew Ferris had five brothers and four sisters; that Eliphalet Ferris and John Ferris are two of these five brothers; that John F. Stites, Sarah Muchmore, Ann Jennings, Benj. Stites, Deborah Bramble, and Phœbe Anderson, defendants, are the children and lawful heirs of Ann Stites, deceased, who was one of the four sisters of Andrew Ferris, deceased; that Mary Ferris and Hezekiah Stites, defendants, are children and lawful heirs of Deborah Stites, deceased, who was one of the four sisters of Andrew Ferris, deceased; that Juliet Ann Lusk, Elizabeth Virginia Lusk, and Milton H. Lusk, minor defendants, are the surviving children of the only daughter and child of Isaiah Stites above named, deceased, and sister of Andrew Ferris, deceased, and that they are the lawful heirs of Deborah Stites; that Isaac Ferris, John D. Ferris, and Mary Keeler, defendants, are the children and lawful heirs of Jeduathan Ferris, deceased, who was one of the five brothers of Andrew Ferris, deceased; that Mary Bishop, defendant, is lawful heir of Ethan Ferris, deceased, who was one of the five brothers of Andrew Ferris, deceased; and that Mary Johnson, minor defendant, is the surviving child of Charlotte Johnson, deceased, who was the child of Ethan Ferris, above named, deceased; and the said Mary Johnson is lawful heir of said Ethan Ferris, deceased, brothers of Andrew Ferris, deceased; that Debo-

rah Hopkins, Peter Ferris, Samuel Ferris, defendants, are the children and lawful heirs of Phœbe Ferris, deceased, who was one of the four sisters of Andrew Ferris, deceased; that Solomon Peck and Jeduathan Peck, defendants, are the children and lawful heirs of Mary Peck, deceased, who was one of the four sisters of Andrew Ferris, deceased; that Ery Jewett, minor defendant, is the only surviving child and lawful heir of Sarah Jewett, deceased, who was a surviving child and lawful heir of Joseph Ferris, deceased; and that John Jewett, minor defendant, is the only surviving child and lawful heir of Mary Jewett, deceased, who was a surviving child and lawful heir of Joseph Ferris, deceased, who was one of the five brothers of Andrew Ferris, deceased. Wherefore and in consideration of the premises, defendants show that the plaintiff has no right or legal claim to the property described in his petition; that the same lawfully and according to the true interpretation of the will of Andrew Ferris, deceased, belongs to the defendants and the other lawful heirs of his brothers and sisters, parties defendant to plaintiff's petition, and the possession thereof is unjustly and wrongfully held from them by the plaintiff. And defendants ask for judgment accordingly; that the petition of plaintiff be denied, and he be ejected from the said premises; and that the court adjudge to these defendants the shares thereof to them justly belonging.

GEORGE R. SAGE,
TAFT, KEY, & MALLOW, Att'ys.
J. S. WHITE,
Att'y for A. L. and D. Bramble, and John F. Stites.
STORER & GWYNNE,
For Charles K. Ferris, Guardian *ad litem* to minor heirs, Ery and John Jewett.

State of Ohio, Hamilton county.

Hezekiah Stites, one of the defendants, being duly sworn, says, that he believes the statements of the foregoing answer to be true.

HEZEKIAH STITES.

Sworn to before me, and subscribed in my presence, this 7th day of November, 1853.

[SEAL.] DAVID L. COLLIER,
Notary Public, H. Co., Ohio.

Copy of the Will of Andrew Ferris.

"I, Andrew Ferris, of the county of Hamilton, and State of Ohio, being of sound and disposing mind, but of feeble health of body, and knowing the uncertainty of life, do hereby make this my last will and testament, as follows:—

First. I desire that the expenses of my last sickness and funeral, and all my just debts, be first paid.

Second. I give to my daughter Elizabeth A. the use of the two hundred acres, more or less, of land on which I now live. It being

the northeast quarter of section No. 22, of the fourth township of the second fractional range in the Miami Purchase, and one share of the Morrison Estate, on the southeast quarter of section No. 23 of said township; also sixty-seven acres, more or less, in section No. 21 of said township: it being the west half the northeast quarter of said section, exclusive of the forfeiture, during her natural lifetime, to have full use and control of the same, with the appurtenances to the same belonging, as long as she shall live.

Thirdly. I give and bequeath to my daughter Elizabeth's children (if she shall have any heirs), their heirs and assigns forever, all of the above described two hundred and sixty-seven acres of land, after Elizabeth is done using or occupying it, and at Elizabeth's death.

Fourthly. If my daughter Elizabeth A. shall die without children, then and in that case I give and bequeath the said two hundred and sixty-seven acres of land (above described) to my brothers and sisters, their heirs and assigns forever, after the death of Elizabeth A., as aforesaid.

Fifthly, and lastly. I hereby appoint John J. Ferris, Andrew J. Ferris, and my daughter Elizabeth A., executors, to settle my whole estate.

Given under my hand and seal, this seventh day of June, A. D. 1849. ANDREW FERRIS. [SEAL.]

Signed and sealed in presence of us, who, by his request, have hereto subscribed our names, as witnesses thereto: "The use of" in the "10" line, and "67," after hundred in the "27" line, were added before signing.

JOHN S. HOSBROOK,
C. B. EBERSOLE.

(Continued.)

Continued from October term, 1853, to January term, 1854.

And now here, to wit, on the thirteenth day of January, A. D. 1854, before the Hon. J. B. Stallo, the following entry was made, clothed in words and figures following, to wit:—

(Leave to withdraw ans. and amend, &c.)

In this case, on proper cause shown by counsel, leave is granted to defendants to withdraw, amend and refile their answer heretofore filed, and an order is hereby made to that effect.

And now here, to wit, on the 25th of January, 1854, comes the plaintiff, and files his answer to the counter claim of E. Ferris, clothed in words and figures following, to wit:—

(An's. of Pl'ff to Counter Claim of E. Ferris.)

Francis A. Parrish, for answer to the counter claim of Eliphalet Ferris, John Ferris, John F. Stites, Sarah Muchmore and her husband David Muchmore, Ann Jennings and her husband Serenus Jennings, Benjamin Stites, Deborah Bramble and her husband Ayres

S. Bramble, Phœbe Anderson and her husband David Anderson, Mary Ferris and her husband Solomon Ferris, Hezekiah Stites, Isaac Ferris, Joseph D. Ferris, Mary Keeler and her husband Wm. H. Keeler, Mary F. Bishop, Deborah Hopkins and her husband Gilbert Hopkins, Peter Ferris, Samuel Ferris, Solomon Peck, Jeduathan Peck, and of Mary Johnson, Juliet Ann Lusk, Elizabeth V. Lusk and Milton H. Lusk, by their guardian ad litem, David Anderson, and of Ery Jewett and John Jewett, minors, by Charles K. Ferris, their guardian ad litem, says: that he admits the truth of all the facts stated and set forth in their said answer and counter claim.

The plaintiff further states, that the said Elizabeth A. Parrish, the wife of the plaintiff and daughter of the said Andrew Ferris, having survived her only child, who died without issue, by her last will and testament, duly admitted to probate and record in this county, devised all her real estate and personal estate to this plaintiff, his heirs and assigns forever. Wherefore, the plaintiff insists the said defendants have no interest in the said real estate, and are not entitled to the relief sought in their said counter claim, and the plaintiff demands judgment against them as prayed for in his petition. WORTHINGTON & MATTHEWS, Attys.

State of Ohio, Hamilton County.

Francis A. Parrish being sworn, says the facts stated in the foregoing answer he believes to be true. F. A. PARRISH.

Subscribed and sworn to before me this 24th day of January, A. D. 1854. SAMUEL S. CARPENTER,
[SEAL.] Notary Public, Hamilton County, Ohio.

25, paid.

And now here, to wit, on the 25th day of January, A. D. 1854, comes the said plaintiff and files his answer to the counter claim of A. J. Parrish et al., clothed in words and figures following, to wit:—

(Ans. to counter claim of A. J. Ferris.)

The said Francis A. Parrish for answer to counter claim of the said Andrew J. Ferris, Charles K. Ferris, Ruth Ferris, Phœbe Ferris, and Joseph Ferris, says, that it is true that the premises described in the plaintiff's petition heretofore belonged in fee simple to Andrew Ferris, who died seised of them; that he, by his will, duly probated and recorded, devised the said premises as follows, to wit: He gave to his daughter, Elizabeth A., then unmarried, the use of the said premises during her natural lifetime, to have full use and control of the same, with the appurtenances to the same belonging, as long as she shall live; and he gave and bequeathed to his said daughter Elizabeth's children (if she have any heirs), their heirs and assigns, forever, all of the said premises after Elizabeth is done using or occupying the same, and at Elizabeth's death; and if his said daughter, Elizabeth A., shall die without children, then and in that case he

gave and bequeathed the said premises to his brothers and sisters, their heirs and assigns forever, after the death of Elizabeth A., as aforesaid; that the said Elizabeth A. Ferris survived her father, Andrew Ferris, and subsequently intermarried with this plaintiff; that during their said marriage with this plaintiff the said Elizabeth A. had one child only, who died in the lifetime of the said Elizabeth, and with issue; that afterwards the said Elizabeth died, leaving her last will and testament duly probated and recorded in this county, whereby she devised to this plaintiff, his heirs and assigns forever, all her real and personal estate of whatever kind and wherever situate. The plaintiff admits that the above-named defendants are the children and only heirs at law of Joseph Ferris, who was one of the brothers of the said Andrew Ferris, but insists that they have no interest in the said real estate, and demands judgment against them as prayed for in his said petition.

WORTHINGTON & MATTHEWS, Attys.

State of Ohio, Hamilton County.

Francis A. Parrish, being duly sworn, says he believes the facts stated in the foregoing answer to be true.

F. A. PARRISH.

Subscribed and sworn to before me, this, 24th day of January, A. D. 1854.

SAMUEL S. CARPENTER,
[SEAL.] Notary Public, Hamilton County, Ohio.

25, paid.

And now here, to wit, on March 22, A. D. 1854, before the Hon. J. B. Stallo, the following judgment was entered, clothed in words and figures following, to wit:—

(Judgment.)

This cause came on for hearing this day upon the petition of the plaintiff, the answers and counter claims of Mary Johnson, Juliet Ann Lusk, Elizabeth V. Lusk, and Milton H. Lusk, minors, by their guardian ad litem, David Anderson, and of Ery Jewett and John Jewett, minors, by their guardian ad litem, and of all the other defendants, all of whom have been duly served with process, or notified by publication according to law, and the replies of the plaintiff to the said counter claims, and the premises being submitted to the court upon testimony and proof, and having been fully argued by counsel, the court thereupon find: that Andrew Ferris, on the seventh day of June, eighteen hundred and forty-nine, there being seised in fee simple of the real estate described in the petition, situate in Hamilton County, in due form of law, made his last will, whereby he devised the said real estate, as follows:—

I give to my daughter, Elizabeth A., the use of the said real estate during her natural lifetime, to have full use and control of the same, with the appurtenances to the same belonging, as long as she shall live. I give and bequeath to my daughter Elizabeth's children

(if she have any heirs), their heirs and assigns forever, the said real estate after Elizabeth is done using or occupying it, and at Elizabeth's death. If my daughter, Elizabeth A. shall die without children, then and in that case I give and bequeath the said real estate to my brothers and sisters, their heirs and assigns forever, after the death of Elizabeth A. as aforesaid.

That the will of the said Andrew Ferris, after his death, to wit, on the twenty-sixth day of June, eighteen hundred and forty-nine, was duly proved and ordered to be recorded as such by the Court of Common Pleas in and for the county of Hamilton; that the said Elizabeth A. Ferris, the daughter of said Andrew Ferris, mentioned in his will as aforesaid, at the time of the making of the said will, and of the death of the said Andrew Ferris, was unmarried; and after his death, on the day of eighteen hundred and fifty, intermarried with the plaintiff, Francis A. Parrish, having taken possession of the said real estate, as devised thereof, under the will aforesaid.

That on the day of eighteen hundred and fifty-two, the said Elizabeth A. Parrish gave birth to a living child, who died, having no children, and no brothers and sisters, in the lifetime of its mother, the said Elizabeth A. Parrish.

That on the twenty-second day of August, eighteen hundred and fifty-two, the said Elizabeth A. Parrish made her last will in due form, whereby she devised all her estate, both real and personal, to her said husband, Francis A. Parrish, the plaintiff, his heirs and assigns, forever.

That the said Elizabeth A. Parrish, having died without having had any other child or children than as above stated, her will as aforesaid was duly proved and admitted to record, on the twenty-second day of September, eighteen hundred and fifty-two, by the Probate Court of Hamilton-County; that the plaintiff had and still has possession of the said real estate since the death of the said Elizabeth A. Parrish, his wife.

That Elizabeth Ferris and John Ferris, defendants, are brothers of the said Andrew Ferris, deceased; that John F. Stites, Sarah Muchmore, Ann Jennings, Benjamin Stites, Deborah Bramble, and Phœbe Anderson, are children and heirs at law of Ann Stites, deceased, who was a sister of the said Andrew Ferris, deceased; that Mary Ferris and Hezekiah Stites are children and heirs at law of Deborah Stites, deceased, who was a sister of Andrew Ferris, deceased.

That Juliet Ann Lusk, Elizabeth V. Lusk, and Milton H. Lusk, are grandchildren and heirs at law of Isaiah Stites, deceased, who was one of the children of the above-named Deborah Stites, deceased; that Isaac Ferris, Joseph D. Ferris, and Mary Keeler, are children and heirs at law of Jeduathan Ferris, deceased, who was one of the brothers of the said Andrew Ferris, deceased.

That Mary Bishop and Mary Johnson are the sole heirs at law of

Ethan Ferris, deceased, who was one of the brothers of Andrew Ferris, deceased.

And thereupon the court find, that by the true construction of the will of the said Andrew Ferris, deceased, an estate for her life was thereby devised to his daughter, the said Elizabeth A. Parrish, with a contingent remainder in fee to any child or children she might thereafter have, with a further alternative contingent remainder in fee to the brothers and sisters of the said Andrew Ferris, deceased, to take effect and become vested in the event that the first contingent remainder should not vest; that upon the birth of the child of the said Elizabeth A. Parrish, the first contingent remainder vested in the said child an estate in fee simple, whereby the said second and alternative contingent remainder in fee in the brothers and sisters of the said Andrew Ferris, deceased, was cut off and destroyed, and forever prevented from vesting and taking effect; that upon the death of the said child, the remainder in fee in the said real estate, vested in the said child, came to and was cast, by virtue of the statute of descents, upon the said Elizabeth A. Parrish, its mother, who thereby became seised in fee simple of the said real estate, which was transmitted and conveyed by the force of her last will to her said husband, Francis A. Parrish, the plaintiff.

Wherefore, the foregoing being all the matters of fact or law submitted or found by the court, the court declare and adjudge that the said plaintiff has the legal title in fee simple to the said real estate described in said petition, and that the said defendants have not any title or interest in the same whatsoever, nor in any part thereof, nor has any or either of them; and the court do therefore order and adjudge that the plaintiff be quieted in his possession and title to the said real estate, and perpetually enjoin the said defendants, and all and each of them, from setting up any claim of title to the same adverse to the plaintiff and this judgment be, and from seeking to disturb the said plaintiff in the quiet possession of the same; and that judgment be entered against said defendants upon their said counter claims, that they are not entitled to the possession of the said real estate, and also that they pay the costs of this cause.

Notice of appeal by the defendants. Bond fixed at $300 00.

And now, here, to wit, on the 2d day of April, in the year eighteen hundred and fifty-five, in the District Court in and for Hamilton County, Ohio, the following entry was made, clothed in words and figures following, to wit:—

(Death of F. A. Parrish, &c.)

It being suggested to the court, that since the last term of this court the plaintiff, Francis A. Parrish, has departed this life, leaving his brothers and sisters his heirs at law, by name as follows: Thomas Parrish, Esther A. Parrish, John C. Parrish, and William Parrish,

of whom the last two named are minors, it is ordered by the court, by consent of parties, that this suit stand revised in the name of the said Thomas Parrish, Esther A. Parrish, and Joseph C. Parrish, a minor, and William H. Parrish, a minor, the two last named by Thomas Parrish, their next friend.

And now, here, to wit, on the 7th day of November, A. D. 1855, in the October term of said court, the following entry was made, clothed in words and figures following, to wit:—

(Reserved to the S. Court of Ohio.)

Difficult and important questions arising in this cause now pending in this court, on motion of plaintiff by their counsel, the judges of this court do hereby order and cause the same to be reserved and sent to the Supreme Court of Ohio for its decision, and this entry be certified and sent with the papers in said case to the Supreme Court.

And now here, to wit, on the 13th day of June, A. D. 1857, of the April term of said court, the following mandate from the Supreme Court of Ohio was entered, clothed in words and figures following, to wit:—

(Mandate from Supreme Court of Ohio.)

This cause came on for hearing this day upon the petition of Francis A. Parrish, the original plaintiff herein, the answers and counter claims of Mary Johnson, Juliet Ann Lusk, Elizabeth V. Lusk, and Milton H. Lusk, minors, by their guardian ad litem, David Anderson, and of Ery Jewett and John Jewett, minors, by their guardian ad litem, Charles K. Ferris, and of all the other defendants, all of whom have been duly served with process or notified by publication according to law, except Sarah Ann Muchmore, Charles Muchmore, and Deborah Muchmore, who appeared by counsel and consent to this decree, and who are the only children and heirs of said Sarah Muchmore, who has deceased since the last continuance of this case, and the replies of the said plaintiff, Francis A. Parrish, to the said counter claims. And the premises being submitted to the court upon testimony and proofs, and a statement in writing of facts agreed to by counsel for all parties respectively, and having been fully argued by counsel, the court thereupon find that Andrew Ferris on the seventh day of June, eighteen hundred and forty-nine, then being seised in fee simple of the real estate described in said plaintiff's petition, situate in the county of Hamilton, in due form of law made his last will, whereby he devised the said real estate as follows:—

I give to my daughter, Elizabeth A., the use of said real estate during her natural lifetime, to have full use and control of the same with the appurtenances belonging, as long as she shall live. I give to my daughter Elizabeth's children (if she shall have any heirs), their heirs and assigns forever, the real estate, after Elizabeth is done

using or occupying it, and at Elizabeth's death. If my daughter Elizabeth A. shall die without children, then and in that case I give and bequeath the said real estate to my brothers and sisters, their heirs and assigns forever, after the death of Elizabeth A. as aforesaid; that the will of the said Andrew Ferris after his death, to wit, on the twenty-sixth day of June, eighteen hundred and forty-nine, was duly proved and ordered to be recorded as such by the Court of Common Pleas in and for the county of Hamilton; that the said Elizabeth A. Ferris, the daughter of the said Andrew Ferris, mentioned in his will as aforesaid at the time of making the said will, and of the death of the said Andrew Ferris, was unmarried, and after his death in the year eighteen hundred and fifty intermarried with the said original plaintiff, Francis A. Parrish, having taken possession of the said real estate as devised thereof under the will aforesaid. That on the day of August, eighteen hundred and fifty-two, the said Elizabeth A. Parrish gave birth to a living child, who died, leaving no children and no brothers and sisters in the lifetime of its mother, the said Elizabeth A. Parrish.

That on the twenty second day of August, eighteen hundred and fifty-two, after the said child had deceased, the said Elizabeth A. Parrish made her last will in due form, whereby she devised all her estate both real and personal to her said husband, Francis A. Parrish, the original plaintiff, his heirs and assigns forever.

That the said Elizabeth A. Parrish having died without having had any other child or children than as above stated, her will as aforesaid was duly proved and admitted to record on the twenty-second day of September, eighteen hundred and fifty-two, by the Probate Court of Hamilton county.

That said original plaintiff in his lifetime had, and since his death the plaintiffs in whose name this cause has been revived, have had and still have possession of the said real estate ever since the death of the said Elizabeth.

That Eliphalet Ferris and John Ferris, defendants, are brothers of the said Andrew Ferris, deceased.

That the defendants, John F. Stites, Ann Jennings, Benjamin Stites, Deborah Bramble, and Phœbe Anderson, are children of Ann Stites, deceased, who was a sister of said Andrew Ferris, deceased; and that Sarah Ann Muchmore, who was one of the children of said Ann Stites, deceased, and who has deceased since the last continuance of this cause, and that the said children and grandchildren of the said Ann Stites are her only heirs.

That Mary Ferris and Hezekiah Stites are children and heirs of Deborah Stites, deceased, and Juliet Ann Lusk, Elizabeth V. Lusk, and Milton H. Lusk, are grandchildren and only heirs at law of Isaiah Stites, deceased, who was one of the children of the above named Deborah Stites, deceased, and that the said children and grandchildren are the only heirs at law of Deborah Stites, deceased; that Isaac Ferris, Joseph D. Ferris, and Mary Keeler, are the only

children and heirs at law of Jeduathan Ferris, deceased, who was one of the brothers of the said Andrew Ferris, deceased.

That Mary Bishop and Mary Johnson are the only heirs-at-law of Ethan Ferris, deceased, who was one of the brothers of Andrew Ferris, deceased; that Solomon Peck and Jeduathan Peck are the only children and heirs of Mary Peck, deceased, who was a sister of the said Andrew Ferris, deceased.

That Charles K. Ferris, Andrew J. Ferris, Phoebe Ferris, and Joseph Ferris, Ruth Ferris, Ery Jewett, and John Jewett, are the only heirs-at-law of Joseph Ferris, deceased, who was one of the brothers of the said Andrew Ferris, deceased.

The court further find, that, by the true and legal construction of the will of said Andrew Ferris, deceased, his said daughter, Elizabeth A., *died without children*, and that the fee of said property did not vest in said Elizabeth A. on the death of her child, or at any time; and that no estate, or interest whatever in said land, passed by her will to her husband, the said Francis A. Parrish; and upon said counter claim, the court do further find, that, upon the death of said Elizabeth A., the devise over contained in the fourth clause of the will of said Andrew Ferris, deceased, took effect.

The court do, therefore, order and adjudge, that the petition be dismissed, and that the plaintiffs pay the costs of this cause, and this cause is remanded to the Court of Common Please of Hamilton County for execution.

Ordered, that a copy of this entry be certified to the clerk of the District Court of Hamilton County for entry, &c.

I, A. B. Butler, clerk of the Supreme Court of Ohio, do hereby certify, that the foregoing decree is truly taken and correctly copied from the journal of said court. Witness my hand and the seal of said court at Columbus, this 29th day of May, A. D. 1857.

[SEAL.] A. B. BUTLER, Clerk.
By H. S. MILLER, Deputy.

State of Ohio, Hamilton County, *ss.*

I, Richard H. Stone, clerk of the District Court of the State of Ohio in and for the county of Hamilton, do hereby certify, that the above and foregoing to be a true and correct transcript of the proceedings had in the above-stated case, as the same appears from the files and records in my office of said court.

Witness my hand and the seal of said court this 20th day of September, A. D. 1858.

[SEAL.] RICHARD H. STONE,
Clerk of the District of the State of Ohio.

Know all men by these presents, that we, Thomas F. Parrish, of Hamilton County, and Joseph Parrish, of Clermont County, in the State of Ohio, are held and firmly bound unto Eliphalet Ferris and others in the full and just sum of one thousand dollars to be paid to

the said Ferris and others, their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents, sealed with our seals, and dated this 6th day of December, in the year of our Lord one thousand eight hundred and sixty.

Whereas, lately, at a Circuit Court of the United States within and for the Southern District of Ohio, in a suit depending in said court between the lessee of Joseph C. Parrish and Eliphalet Ferris and others, a judgment was rendered against the said lessee, plaintiff, and said plaintiff having obtained the allowance of a writ of error, and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit; and a citation directed to the said Ferris and others, defendants, citing and admonishing them to be and appear at a Supreme Court of the United States to be holden at Washington the first Monday of December next:

Now the condition of the above obligation is such, that if the said plaintiff shall prosecute said suit to effect and answer all damages and costs if they fail to make their plea good, then the above obligation to be void, else to remain in full force and virtue:

THOS. F. PARRISH. [SEAL.]
J. PARRISH. [SEAL.]

Signed, sealed, and delivered in presence of and approved by
JNO. McLEAN, JR., Clerk.

Supreme Court of the United States:
United States of America, *ss.*

The President of the United States of America, to the Honorable the Judges of the Circuit Court of the United States for the Seventh Circuit and Southern District of Ohio, greeting: Because in the record and proceedings, and also in the rendition of a judgment in a plea, which is in the said Circuit Court before you between John Doe ex demise Joseph C. Parrrish, plaintiff, and Eliphalet Ferris, John Ferris, John F. Stites, Sarah Ann Muchmore, Charles Muchmore, Deborah Bramble, Ann Jennings and husband, Serenus Jennings, Benjamin Stites, Deborah Bramble and husband Ayres S. Bramble, Phœbe Anderson and husband David Anderson, Juliet Ann Lusk, Elizabeth V. Lusk, Milton H. Lusk, Mary Ferris and husband Solomon Ferris, Hezekiah Stites, Era Jewett, John Jewett, Andrew J. Ferris, Charles K. Ferris, Ruth Ferris, Phœbe Ferris, Joseph Ferris, Isaac Ferris, Joseph D. Ferris, Mary Keeler and husband, William H. Keeler, Mary F. Bishop, Mary Johnson, Deborah Hopkins and husband Gilbert Hopkins, Peter Ferris, Samuel Ferris, Solomon Peck and Jonathan Peck, citizens of the State of Ohio, defendants, a manifest error hath happened, to the great damage of the said John Doe ex demise Joseph C. Parrish, as, by their complaint appears; and it being fit that the error, if any there hath been, should

be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf: you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at the city of Washington, on the first Monday in the month of December next, in the said Supreme Court, then and there to be held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

Witness, the Honorable Roger B. Taney, Chief Justice of the said Supreme Court of the United States, this sixth day of December, in the year of our Lord one thousand eight hundred and sixty, and of the Independence of the United States of America the

[SEAL.] Attest: JOHN McLEAN, JR.,
Clerk U. S. Cir. Court, Seventh Circuit,
and Southern District of Ohio.

I allow this writ. H. H. LEAVITT,
District Judge U. S. Southern District of Ohio.

The United States of America,
Supreme Court of the United States.

To Eliphalet Ferris, John Ferris, John F. Stites, Sarah Ann Muchmore, Charles Muchmore, Deborah Muchmore, Ann Jennings and husband Serenus Jennings, Benjamin Stites, Deborah Bramble and husband Ayres S. Bramble, Phœbe Anderson and husband David Anderson, Juliet Ann Lusk, Elizabeth V. Lusk, Milton H. Lusk, Mary Ferris and husband Solomon Ferris, Hezekiah Sites, Era Jewett, John Jewett, Andrew J. Ferris, Charles K. Ferris, Ruth Ferris, Phœbe Ferris, Joseph Ferris, Isaac Ferris, Joseph D. Ferris, Mary Keeler and husband William H. Keeler, Mary F. Bishop, Mary Johnson, Deborah Hopkins and husband Gilbert Hopkins, Peter Ferris, Samuel Ferris, Solomon Peck, and Jonathan Peck, citizens of the State of Ohio, greeting :—

Whereas John Doe ex demise Joseph C. Parrish, has obtained the allowance of our writ of error, to the Supreme Court of the United States directed, to remove into the said Supreme Court, to be holden at the city of Washington, on the first Monday in the month of December next, the record of a certain plaint, process, proceedings and judgment in an action of ejectment, wherein you the said Eliphalet Ferris, John Ferris, John F. Stites, Sarah Ann Muchmore, Charles Muchmore, Deborah Muchmore, Ann Jennings and husband Serenus Jennings, Benjamin Stites, Deborah Bramble and husband Ayres S. Bramble, Phœbe Anderson and husband David Anderson, Juliet Ann Lusk, Elizabeth V. Lusk, Milton H. Lusk, Mary Ferris and

husband Solomon Ferris, Hezekiah Stites, Era Jewett, John Jewett, Andrew J. Ferris, Chas. K. Ferris, Ruth Ferris, Phœbe Ferris, Joseph Ferris, Isaac Ferris, Joseph D. Ferris, Mary Keeler and husband Wm. H. Keeler, Mary F. Bishop, Mary Johnson, Deborah Hopkins and husband Gilbert Hopkins, Peter Ferris, Samuel Ferris, Solomon Peck, and Jonathan Peck, citizens of the State of Ohio, in that action lately recovered against the said John Doe ex demise Joseph C. Parrish a judgment for costs, as by the said record in the said Supreme Court remaining appears, in which said record and proceedings, and also in the rendition of the judgment thereupon, manifest error hath intervened, as by the said record we are informed, and our said writ of error granted, issued and allowed as aforesaid, for the purpose of correcting the errors aforesaid alleged, if any there be. You are, therefore, hereby commanded and cited to be and appear before the Judges of the said Supreme Court, at the city of Washington, at the next term of said court, to be holden on the first Monday in the month of December next, to have the errors aforesaid corrected, and the judgment of our said Supreme Court thereupon.

Witness, the Honorable Roger B. Taney, Chief Justice of the United States of America, this 6th day of December, in the year of our Lord one thousand eight hundred and sixty, and of the independence of the United States of America the 85th.

[SEAL.] H. H. LEAVITT,
U. S. Judge Cir. Ct. S. D. of O.

We acknowledge the service of the within writ on behalf of the defendants in error, Dec. 26, 1860. TAFT & PERRY,
JAMES & JACKSON.

Assignment of Errors.

JOHN DOE, ex dem. JOSEPH C. PARRISH,
vs.
ELIPHALET FERRIS, JOHN FERRIS and others.

And now comes the said John Doe, by his attorney, and says that in the proceedings and judgment of the Circuit Court of the United States for the Southern District of Ohio, there is manifest error in this, to wit, that the court instructed the jury, upon the evidence contained in the bill of exceptions, that the plaintiff was not entitled, in law, to recover possession of the premises described in his declaration, and, also, because judgment was rendered for the defendants, when, by law, it should have been for the plaintiff.

Wherefore, the plaintiff prays that the judgment aforesaid may be reversed with costs, and that he may be restored to all things he has lost by reason thereof. G. E. PUGH, Attorney.

Filed 17 January, 1861.